AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

9–26–03 Friday
Vol. 68 No. 187 Sept. 26, 2003

Pages 55433–55806

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 187

Friday, September 26, 2003

Agency for International Development
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55575

Agricultural Marketing Service
PROPOSED RULES
Watermelon research and promotion plan, 55556

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Food and Nutrition Service
See Forest Service
See Rural Housing Service

Antitrust Division
NOTICES
Antitrust Procedures and Penalty Act (Tunney Act):
United States v. National Council on Problem Gambling, Inc.
Proposed final judgment; public comments and plaintiff's response, 55654–55656
National cooperative research notifications:
Internet Streaming Media Alliance, Inc., 55656–55657
Open Mobile Alliance, 55657
Spray Drift Task Force, 55657–55658

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services
RULES
Medicaid:
Outpatient prescription drugs coverage; rebate agreements with manufacturers; price recalculations time limitation and recordkeeping requirements
Correction, 55527–55528
Medicare and Medicaid:
Paid feeding assistants in long term care facilities; requirements, 55528–55539
PROPOSED RULES
Medicare:
Physician fee schedule (2004 CY); payment policies and relative value unit adjustments
Correction, 55566
NOTICES
Medicare:
National coverage determinations; revised process, 55634–55641
Medicare and medicaid:
National accreditation organizations; approval—
Community Health Accreditation Program, 55616–55618
Program issuances and coverage decisions; quarterly listing, 55618–55634

Coast Guard
RULES
Outer Continental Shelf activities:
Gulf of Mexico; safety zones, 55443–55445
Ports and waterways safety:
San Francisco Bay, CA—
Security zones, 55445–55448
Waterfront facilities:
Class 1 explosive materials or other dangerous cargoes; handling, 55436–55443
PROPOSED RULES
Outer Continental Shelf activities:
Gulf of Mexico; safety zones, 55557–55559
Pollution:
Ballast water discharge standard; preventing introductions and spread of nonindigenous species; environmental protection requirement, 55559–55563
NOTICES
Maritime security:
Automatic Identification System; carriage requirements expansion for U.S. waters
Comment request and public meetings, 55643–55645

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Privacy Act:
Systems of records, 55582–55583

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 55581–55582

Commodity Credit Corporation
RULES
Loan and purchase programs:
Crop Disaster Program and Livestock Assistance Program
Correction, 55433

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55741–55743

Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55645–55647

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Privacy Act:
Systems of records, 55593–55594

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 55597–55598

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55598

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 55658

Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Hydrogen, Fuel Cells and Infrastructure Technologies Program, 55598–55599
National Energy Technology Laboratory—
U.S. colleges and universities; advance coal research, 55599–55604

Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Scour sensor assembly, etc., 55594–55597

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 55469
Air quality planning purposes; designation of areas:
Georgia, 55469–55475
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenazate, 55494–55503
Chlorfenapyr, 55519–55527
Etoxazole, 55485–55493
Fenhexamid, 55513–55519
Imazapyr, 55475–55485
Thiacloprid, 55503–55513
PROPOSED RULES
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
All Appropriate Inquiry Negotiated Rulemaking Committee—
Meetings, 55563
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 55563–55566
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 55604–55605
Meetings:
Association of American Pesticide Control Officials, State FIFRA Issues Research and Evaluation Group, et al., 55605–55606
FIFRA Scientific Advisory Panel, 55606–55609
U.S. Government Representative to Commission for Environmental Cooperation—
National Advisory Committee, 55609
Pesticide registration, cancellation, etc.:
Bayer Environmental Science, 55609–55611
Reports and guidance documents; availability, etc.:
Integrated Risk Information System; needs assessment, 55611
Water pollution control:
National Pollutant Discharge Elimination System—
Alaska; small publicly owned treatment works and other small treatment works treating domestic sewage; general permits, 55611–55612

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

Federal Aviation Administration
RULES
Airworthiness directives:
Eurocopter France, 55433–55435
Class E Airspace, 55435–55436
NOTICES
Exemption petitions; summary and disposition, 55710–55711
Meetings:
Government/Industry Aeronautical Charting Forum, 55711
Passenger facility charges; applications, etc.:
Hattiesburg-Laurel Regional Airport, MS, 55712

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Digital television conversion—
Digital low power television, television translator stations and digital television booster stations and related issues; comment request, 55566–55573
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55612–55614
Common carrier services:
In-region interLATA services—
SBC Communications Inc. et al.; application to provide service in Michigan, 55614–55616

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55741–55743

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Seattle, King County, WA, 55712–55713

Federal Motor Carrier Safety Administration
NOTICES
National Environmental Policy Act; implementation, 55713–55732

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern & Santa Fe Railway Co., 55732–55735
New Jersey Transit Corp., 55735–55736

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55741–55743

Federal Transit Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55736–55737
Environmental statements; availability, etc.:
World Trade Center, NY; Permanent Port Authority Trans Hudson Terminal, 55737–55739

Fish and Wildlife Service
RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 55783–55805
NOTICES
Comprehensive conservation plans; availability, etc.:
Eastern Shore of Virginia and Fisherman Island National Wildlife Refuges, VA, 55650–55651

Food and Drug Administration
NOTICES
Meetings:
Counter terrorism products; effective strategies to assist product development; public workshop, 55641

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55575–55576

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Maxtor Corp.; data storage products assembly and warehousing facilities, 55583

Forest Service
NOTICES
Environmental statements; notice of intent:
Mississippi National Forests, 55576–55580
Siskiyou National Forest, OR; correction, 55746

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
NOTICES
Privacy Act:
Systems of records, 55642–55643

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 55647–55649

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
NOTICES
Meetings:
Invasive Species Advisory Committee, 55649

Internal Revenue Service
RULES
Procedure and administration:
Return information disclosure by officers and employees for investigative purposes
Correction, 55436
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55743–55744

International Trade Administration
NOTICES
Antidumping:
Fresh garlic from—
China, 55583–55587
Large newspaper printing presses and components from—
Germany, 55587–55589
Refined brown aluminum oxide from—
China, 55589–55591
Tariff rate quotas:
Worsted wool fabrics, 55591–55592

International Trade Commission
NOTICES
Import investigations:
Barium carbonate from—
China, 55653
Ceramic station post insulators from—
Japan, 55653–55654

Justice Department
See Antitrust Division

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Snake River Resource Management Plan, WY, 55651–55652
Recreation management restrictions, etc.:
Yellowstone County, MT; firearms target shooting emergency closure, 55652–55653

Legal Services Corporation
RULES
Aliens; legal assistance restrictions:
Alien eligibility for representation by LSC programs, 55539–55542

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
STEEL AWEIGH, 55739–55740

Minerals Management Service
PROPOSED RULES
Royalty Management:
Crude oil produced from Federal leases; valuation and reporting provisions, 55556–55557

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 55659

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Glazing materials—
Low-speed vehicles, etc., 55544–55545
Nonconforming vehicles—
Importation eligibility; determinations, 55545–55554
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Glaval Bus, Inc., 55740

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf king mackerel, 55554–55555
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Dolphin and wahoo, 55573–55574
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 55592
Pacific Fishery Management Council, 55592–55593

National Park Service
RULES
Special regulations:
Glen Canyon National Recreation Area, UT and AZ; personal watercraft use, 55448–55466

National Science Foundation
NOTICES
Meetings:
Materials Research Proposal Review Panel, 55659

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 55597

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Florida Power Corp., 55662–55663
Meetings:
Reactor Safeguards Advisory Committee, 55663–55665
Applications, hearings, determinations, etc.:
Entergy Nuclear Operations, Inc., 55660–55662

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

Patent and Trademark Office
RULES
Trademark cases:
Madrid Protocol Implementation Act; rules of practice—
International applications and registrations; trademark-related filings, 55747–55781

Postal Service
NOTICES
Meetings; Sunshine Act, 55665

Railroad Retirement Board
NOTICES
Privacy Act:
Computer matching programs, 55665–55666

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
DOT specification cylinders; maintenance, requalification, repair, and use requirements, 55542–55544

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55580–55581
Grants and cooperative agreements; availability, etc.:
Rural Community Development Initiative; correction, 55581

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 55667
Public Company Accounting Oversight Board:
Auditing and related professional practice standards; proposed rules filed, 55667–55673
Ethics Code; proposed rules filed, 55673–55680
Self-regulatory organizations; proposed rule changes:
International Securities Exchange, Inc., 55680–55686
National Association of Securities Dealers, Inc., 55686–55691
New York Stock Exchange, Inc., 55691–55694
NQLX LLC, 55695–55696
Applications, hearings, determinations, etc.:
Time Warner Co., L.P., et al., 55666–55667

Social Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55696–55698
Grants and cooperative agreements; availability, etc.:
Homeless Outreach Projects and Evaluation Program, 55698–55709

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 55740
Railroad services abandonment:
Union Pacific Railroad Co., 55740–55741

Trade Representative, Office of United States
NOTICES
African Growth and Opportunity Act; implementation:
Sub-Saharan African countries; benefits eligibility criteria, 55709–55710

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

NOTICES
Foreign securities, U.S. ownership survey; reporting requirements, 55741

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Veterans Benefits Act of 2002; compensation and pension provisions, 55466–55467
Grants:
Homeless Providers Grant and Per Diem Program, 55467–55468
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55744–55745

Separate Parts In This Issue

Part II
Commerce Department, Patent and Trademark Office, 55747–55781

Part III
Interior Department, Fish and Wildlife Service, 55783–55805

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
1412.....55433
1421.....55433
1439.....55433
1480.....55433
Proposed Rules:
1210.....55556

14 CFR
39.....55433
71 (2 documents) 55435

26 CFR
301.....55436

30 CFR
Proposed Rules:
206.....55556
210.....55556

33 CFR
126.....55436
147.....55443
165.....55445
Proposed Rules:
147.....55557
151.....55559

36 CFR
7.....55448

37 CFR
2.....55748
7.....55748

38 CFR
3.....55466
17.....55467
61.....55467

40 CFR
52.....55469
81.....55469
180 (6 documents) 55475, 55485, 55494, 55503, 55513, 55519
Proposed Rules:
Ch. I.....55563
300.....55563

42 CFR
447.....55527
483.....55528
488.....55528
Proposed Rules:
410.....55566
414.....55566

45 CFR
1626.....55539

47 CFR
Proposed Rules:
74.....55566

49 CFR
107.....55542
180.....55542
571.....55544
593.....55545

50 CFR
20.....55784
622.....55554
Proposed Rules:
622.....55573

Rules and Regulations

Federal Register

Vol. 68, No. 187

Friday, September 26, 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.

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1412, 1421, 1439, and 1480

2003 Agricultural Assistance Act—Crop Disaster Program and Livestock Assistance Program; Correction

AGENCIES: Commodity Credit Corporation, Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published by the Commodity Credit Corporation on Thursday, June 26, 2003. The language in the preamble under the heading ''Environmental Assessment'' was incorrect. This document corrects that language to reflect the level of analysis performed by the agency prior to publication of that rule.

FOR FURTHER INFORMATION CONTACT: Virgil Ireland, USDA/FSA/DAFP/STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–5103; facsimile (202) 690–3610; electronic mail: *Virgil_Ireland@wdc.usda.gov.*

Correction

Accordingly, in the final rule published on June 26, 2003 (68 FR 37936–37952) make the following correction.

On page 37936, in the third column, in the paragraph entitled Environmental Assessment, correct the entire paragraph to read as follows:

Environmental Assessment

The Agency is currently completing a draft programmatic environmental assessment (PEA) to analyze the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) and FSA's regulations for compliance with NEPA (7 CFR part 799). The draft PEA will be made available for public comment prior to completion of the final PEA.

Signed at Washington, DC, on September 12, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–24352 Filed 9–25–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–22–AD; Amendment 39–13315; AD 2003–19–12]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC 155B helicopters. This action requires, before further flight, determining whether the engine ''GOV'' warning light caution advisory display (display) panel illuminates the ''GOV'' warning lights when appropriate. If not, this AD requires replacing the front panel of the display panel with an airworthy display panel before further flight. This amendment is prompted by the discovery of some operating anomalies affecting the red ''GOV'' warning light due to wiring errors that occurred after modifying the electrical power systems. The actions specified in this AD are intended to prevent failure of the display to warn of an engine governor failure, resulting in an engine over speed, loss of an engine, and subsequent loss of control of the helicopter.

DATES: Effective October 14, 2003.

Comments for inclusion in the Rules Docket must be received on or before November 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0112, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC155B helicopters. The DGAC advises of the detection of operating anomalies affecting the red ''GOV'' warning lights and the need to check the engine governing warning system for correct operation before the next flight.

Eurocopter has issued Alert Service Bulletin EC155 No. 77A001, dated May 7, 2003, which specifies operational checks of the red ''GOV'' warning lights and the related electrical circuits. The DGAC classified the service bulletin as mandatory and issued AD No. 2003–196(A), dated May 28, 2003, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent failure of the display to warn of an engine governor failure, resulting in an engine over speed, loss of an engine, and subsequent loss of control of the helicopter. This AD requires the following:

• Before further flight, determine if the display illuminates the ''GOV'' warning lights. If the display illuminates the ''GOV'' warning lights, no further action is required.

• If crosses illuminate instead of the ''GOV'' warning lights on the display, replace the front panel of the display with an airworthy part before further flight.

Replacing the front panel of the display with an airworthy part, part number 022TA0402, constitutes terminating action for the requirements of this AD.

An owner/operator (pilot) may perform the visual checks for an inoperative governing warning system display. Pilots may perform these checks because they require no tools and can be accomplished by observation and may be performed equally well by a pilot or a mechanic. However, the pilot must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, checking that the display illuminates the ''GOV'' warning lights and, if necessary, replacing the front panel of the display with an airworthy part before further flight is required.

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

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 3 helicopters and will take approximately 15 minutes for an operational check of the engine governor warning system and 1 work hour to replace the front panel of the display at an average labor rate of $60 per work hour. Required parts will cost approximately $3500 per helicopter. Based on these figures, the estimated total cost impact of the AD on U.S. operators is $10,725.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–22–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2003–19–12 Eurocopter France: Amendment 39–13315. Docket No. 2003–SW–22–AD.

Applicability: Model EC 155B helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the caution advisory display (display) to warn of an engine governor failure, resulting in an engine over speed, loss of an engine, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, on ground run-up, with both engines running:

(1) Determine if the red ''GOV'' warning light on the front panel of the caution display for the No. 1 engine comes on when you operate the Engine No. 1 governing mode selector.

(2) Set the selector back to the NORMAL or to the AUTO position and close the cover.

(3) Repeat this check on engine No. 2.

(4) If the display panel illuminates the ''GOV'' warning lights during the No. 1 and No. 2 engine checks, the panel is operating properly.

(b) An owner/operator (pilot), holding at least a private pilot certificate, may perform the visual check and must enter compliance with paragraph (a) of this AD into the helicopter maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)).

Note 1: Eurocopter Alert Service Bulletin EC155 No. 77A001, dated May 7, 2003, pertains to the subject of this AD.

(c) If red crosses appear on the upper line on the front panel of the display instead of the ''GOV'' warning lights, before further flight, replace the front panel with an airworthy front panel, part number (P/N) 022TA0402.

(d) Replacing the front panel of the display with an airworthy front panel, P/N

022TA0402, constitutes terminating action for the requirements of this AD.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on October 14, 2003.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France), AD No. 2003–196(A), dated May 28, 2003.

Issued in Fort Worth, Texas, on September 15, 2003.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–24282 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15628; Airspace Docket No. 03–AWP–10]

Modification of Class E Airspace; Waimea-Kohala, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction and confirmation of effective date.

SUMMARY: This action corrects a rule that was published in the **Federal Register** on August 12, 2003, (68 FR 47846; FR Doc. 03–20406). It corrects an error in the latitude description of the Waimea-Kohala Airport and omits a word in the airspace description for Waimea-Kohala, HI. This document also confirms the effective date of the direct final rule, which modifies the Class E airspace at Waimea-Kohala, HI.

DATES: The direct final rule and this correction are effective at 0901 UTC on October 30, 2003. Comments for inclusion in the Rules Docket must have been received on or before August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Branch, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6622.

SUPPLEMENTARY INFORMATION: The FAA published FR Document 03–20406 in the **Federal Register** on August 12, 2003, (68 FR 47846) to modify Class E airspace at Waimea-Kohala, HI. The latitude description of the Waimea-Kohala Airport and the wording of the 700' Class E airspace were described incorrectly.

§ 71.1 [Corrected]

The following information corrects those errors for Waimea-Kohala, HI. On page 47847, correct the Waimea-Kohala Airport, HI latitude to read: (Lat. 20°00′05″ N,) and on page 47847, column 1, 3rd line from the bottom omit the word ''the''.

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on August 12, 2003, (68 FR 47846). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Los Angeles, California, September 10, 2003.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–24142 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16122; Airspace Docket No. 03–ASO–17]

Removal of Class E Airspace; Clifton, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E5 Airspace at Clifton, TN, as there is no longer a Standard Instrument Approach Procedure (SIAP) for Hassell Field Airport requiring Class E5 airspace.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) SIAP for Hassell Field Airport has been canceled. Therefore, the Class E5 airspace area must be removed. This rule will become effective on the date specified in the ''DATE'' section. Since this action eliminates the impact of controlled airspace on users of the airspace in the vicinity of the Hassell Field Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace ares extending upward form 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at Clifton, TN.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Clifton, TN [REMOVE]

* * * * *

Issued in College Park, Georgia, on September 19, 2003.

Walter P. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–24431 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9073]

RIN 1545–BB17

Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that was published in the **Federal Register** on Thursday, July 10, 2003 (68 FR 41073), relating to the disclosure of return information pursuant to section 6103(k)(6) of the Internal Revenue Code.

DATES: These corrections are effective July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under section 6103(k)(6) of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of temporary regulations (TD 9073), that was the subject of FR Doc. 03–17384, is corrected as follows:

§ 301.6103(k)(6)–1T [Corrected]

1. On page 41076, column 1, § 301.6103(k)(6)–1T(a)(1)(v), line 7, the language, ''paragraph (a)(1)(iii) of this section skills'' is corrected to read ''paragraph (a)(1)(iii) of this section or skills''.

2. On page 41076, column 3, § 301.6103(k)(6)–1T(c)(1), line 16 from the top of the column, the language, ''not limit or prescribe IRS or TIGTA'' is corrected to read ''not limit or proscribe IRS or TIGTA''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–24416 Filed 9–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 126

[USCG–1998–4302]

RIN 1625–AA07 (Formerly RIN 2115–AE22)

Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating the regulations relating to the handling of packaged and bulk-solid dangerous cargo at waterfront facilities. These updated regulations reflect improved safety procedures and modern transportation methods, such as the use of containers. This rule also updates the requirements for handling these dangerous cargoes and incorporates industry standards.

DATES: This regulation is effective October 27, 2003, except for § 126.15(a)(3), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the effective date of that paragraph. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003, except for the incorporation by reference in § 126.15(a)(3), which will be approved as of the effective date announced in the **Federal Register**.

ADDRESSES: Comments and material(s) received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [USCG–1998–4302] and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Brian Robinson, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–3), room 1218, telephone 202–267–0018, e-mail *brobinson@comdt.uscg.mil.* If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 29, 1998, we published a notice of proposed rulemaking entitled ''Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes within or Contiguous to Waterfront Facilities'' in the **Federal Register** (63 FR 57964). On January 12, 1999, we published a notice in the **Federal Register** reopening the comment period for this rulemaking (64 FR 1770). We received eight letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The regulations in 33 CFR part 126 prescribing requirements for designated waterfront facilities that handle, store, and transfer hazardous materials to and from vessels were written in the 1950s and have never been significantly updated.

On September 4, 1990, the Coast Guard published a final rule (55 FR 36252) amending part 126 to exclude its application to bulk-liquid hazardous materials, other than certain liquefied gases. Moreover, on August 3, 1995, the Coast Guard published a final rule (60 FR 39788) further amending part 126 to exclude its application to the remaining liquefied gases and to transfer the requirements for the control of liquefied hazardous gas transfers from 33 CFR 126.15(o) to 33 CFR part 127. As amended, part 126 applies only to facilities handling packaged and dry-bulk hazardous materials.

On January 13, 1993, the Coast Guard published an advance notice of proposed rulemaking ((ANPRM)(58 FR 4127)) requesting comments on proposed changes to 33 CFR part 126. The Coast Guard received 11 comments in response to the ANPRM.

We are amending our regulations in 33 CFR part 126 concerning waterfront facilities handling certain dangerous cargo. These amendments are necessary to better address the hazards and precautions necessary for packaged cargo, which have changed significantly with the advent of containerization. We are also incorporating up-to-date industry standards and reorganizing the part for clarity.

All measurements in this rule are in Systéme International D'Unites (SI) units, with the English measurement following in parentheses. The Omnibus Trade and Competitive Act of 1988 (Pub. L. 100–418) designates the SI system as the preferred system of weights and measurements for United States trade and commerce. The American Society of Testing and Materials (ASTM) and the American Society of Mechanical Engineers (ASME) also support the conversion to metric standards.

Discussion of Comments and Changes

A discussion of the comments received and changes made to the proposed rule follow.

Section numbers

1. Sections numbered under the outmoded system for numbering sections (*e.g.*, § 126.01) are renumbered using the current system (*e.g.*, § 126.1).

Applicability (§ 126.1)

1. We added new § 126.1 to make it clear that this part has requirements not only for waterfront facilities but also for vessels at those facilities. For example, see new § 126.30 on welding and hotwork on facilities and vessels at those facilities.

Definitions (§ 126.01, and § 126.3)

1. One comment recommended that the definition of ''container'' be the same as in the Intermodal Safe Container Act (ISCA) and its implementing regulations at 49 CFR parts 450 through 453.

We do not agree. The ISCA and its regulations address the technical standards for the construction and structural integrity of containers. The proposed definition for ''container'' is the same as found in 49 CFR parts 170 through 176 for containers used in the transportation of hazardous materials.

2. We have added the definition of ''facility operator'' in this section. See the explanation for this under ''hotwork'' (§ 126.30) in this section of the preamble.

Conditions for designating waterfront facilities (§ 126.15)

1. One comment asked whether the proposed changes to § 126.15(a) would continue to apply to facilities handling dry, bulk-solid dangerous cargo.

As stated in the preamble to the NPRM, proposed § 126.15 differentiates between container terminals and other designated waterfront facilities. Proposed § 126.15(a) would apply to those facilities not handling dangerous cargo in transport units and proposed § 126.15(b) would apply to container terminals. Proposed §§ 126.15(c) through 126.15(n) would apply to all designated waterfront facilities. We reorganized § 126.15 to make this differentiation clearer. New paragraph (a) contains requirements for all waterfront facilities subject to this part; new paragraph (b) contains additional requirements for facilities that handle dangerous cargo not in transport units; and new paragraph (c) contains additional requirements for facilities that handle dangerous cargo in transport units.

Cargo spacing

1. Two comments requested clarification as to whether these updated regulations would eliminate all restrictions on the physical arrangement of dry, bulk-solid dangerous cargoes.

The existing regulations for cargo spacing were designed to permit firefighting access to storage areas. Though we are revising § 126.15 by removing most of the requirements for the arrangement of cargo, freight, merchandise, or material, including dry, bulk-solid materials, we still require at least one main aisle, as indicated in the National Fire Protection Association (NFPA) Code 307, chapter 8–5. The only exception to having at least one main aisle is when cargo is transferred directly to or from railroad cars or vehicles. For that reason, it is unnecessary to use trucks within the structure. Therefore, an aisle must not be required. Additionally, you must segregate bulk-solid cargoes according to § 126.27(g) for product compatibility. We encourage facility owners and operators to coordinate with the Captain of the Port (COTP) and local fire-service officials to implement these new standards based on the structure of the facility and local fire-service practices.

Construction of piers, wharves, and terminal buildings

1. One comment requested that we incorporate the standards in NFPA 307, chapters 3 and 4, for the construction of piers, wharves, and terminal buildings into these regulations.

We do not agree with this comment. While we recognize that the requirements of NFPA 307 represent generally accepted building practices, the standards for the design and construction of designated waterfront facilities are best established by State or local authorities. Additionally, we determined that, in many ports, the construction aspects of NFPA 307 are already enforced, usually by the local fire department, in conjunction with other building codes.

Existing facilities

1. One comment noted that, by applying the NFPA standards to existing facilities, we would create a large financial burden on industry, particularly for facilities and terminals that were built many years ago.

Because NFPA 307 does not require refurbishment of existing facilities for this purpose, only those facilities that are rebuilding or remodeling existing structures and those building completely new structures will be affected. Paragraph 1–2 of NFPA 307 states: ''Unless otherwise noted, it is not intended that the provisions of this document be applied to facilities, equipment, structures, or installations that were existing or approved for construction prior to the effective date of the document, except in those cases in which it is determined by the authority having jurisdiction that the existing situation involves a distinct hazard to life or property.'' Additionally, in many ports, the construction aspects of NFPA 307 are already enforced by local authorities. Accordingly, we will not require owners to refurbish existing facilities unless there is a distinct safety hazard.

Warning signs (§ 126.15(e))

1. One comment requested clarification as to who, at each facility, is responsible for enforcing the regulations required by this section that are posted on the warning signs. This comment asked if we will cite a terminal owner if we find an individual smoking in a ''No Smoking'' area.

Generally, our enforcement actions will target the party subject to these regulations who can most effectively bring about compliance or a remedy for the deficiencies or alleged violations. The COTP is still responsible for identifying who is responsible for a violation and initiating appropriate enforcement actions.

International shore connection (§ 126.15(g))

1. One comment recommended that a designated waterfront facility, that conducts cargo operations with foreign-flag vessels, should be allowed to use an international shore connection provided by the local fire department rather than provide its own connection at that facility.

We conditionally agree with this comment. As stated in the NPRM, the international shore connection makes it possible to connect dissimilar U.S. facilities and fire main connections for foreign vessels in the event of an emergency. You must make available an international shore connection that meets ASTM F–1121 by providing it yourself or through your local emergency response department.

Railroad or highway vehic1es (§ l26.27(b))

1. One comment asked if the COTP must be notified when containers with dangerous cargo in railroad or highway vehicles are being transported across or on the facility solely for transfer to or from a ferry.

We have clarified this paragraph by adding the words ''transport units'' to the exceptions listed in § 126.27(b). Transport units and railroad or highway vehicles carrying containers loaded with dangerous cargo across or on the facility solely for transfer to a ferry are not subject to these reporting requirements.

Net explosive quantity (§ 126.27(b)(1))

1. Three comments recommended that the quantity of explosives triggering a notification to the COTP under § 126.27(b)(1) should be revised to specify that the net explosive quantity is used. The net explosive quantity is the most commonly used indicator in the industry of the actual amount of explosives present.

We agree with this comment and have revised this paragraph.

Flammable Gases (§ 126.27)

1. Two comments recommended that the proposed amendments to § 126.27(b)(2) concerning the provisions for notification to the COTP for shipments of Class 2, Division 2.1 (Flammable Gas), apply to bulk packaging of this product.

We agree with these comments and have revised this paragraph. For the purposes of this section, the definition of ''bulk packaging'' is the same as that found in 49 CFR 171.8.

Segregation (§ 126.27)

1. Two comments recommended that we allow the same exception from the segregation requirements for break-bulk dangerous cargo in limited quantity packaging in §§ 126.27(d) to 126.27(e) for limited quantity packaging in transport units. This was suggested for consistency with the International Maritime Dangerous Goods Code. One of these comments also suggested that we clarify the regulations regarding segregating transport units at a facility according to 49 CFR 176.83(f). The same requirements should apply for ''on-deck'' horizontal stowage.

We agree with these comments and have revised this paragraph accordingly.

2. Two comments objected to the proposed requirement that containers loaded with dangerous cargoes must be segregated according to 49 CFR 176.83. These comments described a local practice where containers loaded with dangerous cargo are required to be stored on a chassis rather than in grounded storage. These comments stated that, by removing the containers with dangerous cargo from grounded storage, the port would provide a safer environment by enabling easier access and identification in the event of an emergency. This, among other benefits, would reduce handling and provide greater accessibility for monitoring.

As stated in the preamble to the proposed rule, these rules will establish minimum safety standards for the operation of designated waterfront facilities. With approximately 485 facilities being subject to these regulations, we recognize that there are situations where the application of these regulations is not practical. This might arise because of local conditions or because the local port authorities or facility owners or operators have developed programs or operational practices to ensure safety, such as the one described by these comments. Existing § 126.11 allows the COTP to grant waivers of compliance; new § 126.12 allows the COTP to examine alternative methods of compliance. Both of these sections allow the minimum safety standards to be tailored to meet unique, local conditions and to provide for the development and implementation of alternative methods of ensuring safety. Facility owners and operators, who have developed alternative methods of ensuring safety, such as the one described in these comments, may request a waiver or alternative from the COTP under §§ 126.11 or 126.12.

Water soluble oxidizers (§ 126.27(h))

1. One comment requested clarification of the requirements in § 126.27(h). This requires you to store water-soluble oxidizers (Division 5.1) in a manner that prevents them from coming into contact with water. This comment stated that industry takes every precaution to ensure these materials are kept dry but does not plan for abnormal situations, such as the vessel sinking or hurricanes.

This section applies to the storage of dangerous cargoes at designated waterfront facilities and not while they are on a vessel or in another mode of transportation. Therefore, we retain our proposed language.

Liquid oxidizers (§ 126.27(i))

1. One comment objected to the provisions in proposed § 126.27(i) that requires liquid oxidizers (Division 5.1) materials to be stored so that, in the event of a leak from their packaging, they would not come in contact with organic materials. This comment stated that industry was unaware of any incidents resulting from a leak of a liquid oxidizer coming in contact with organic material. It added that the current segregation standards under International Maritime Organization (IMO) and Research and Special Programs Administration (RSPA) for the transportation of dangerous goods are adequate.

We do not agree with this comment. While we agree that the IMO and RSPA segregation standards are adequate for transportation purposes, the requirements of this section apply to the storage of dangerous cargoes at designated waterfront facilities. We recognize that, although there are possible combinations of Division 5.1 products and organic materials that would not result in a hazardous reaction, there are many other possible combinations of these materials that could produce a dangerous chemical reaction. Therefore, we retain our proposed language.

Storage (§ 126.27(j))

1. One comment expressed concern that proposed § 126.27(j), which would require that dangerous cargo on the facility be stored in a manner that retards the spread of fire, could be interpreted to mean that explosives stored within an explosive storage magazine would have to be interspersed with fire-retardant material. This comment requested that we clarify this section by indicating that this does not apply to packages within an explosive storage magazine.

This section applies to the storage of dangerous cargo at a designated waterfront facility. If a designated waterfront facility has the capability to store explosive materials within an explosive storage magazine, this type of storage is already adequately addressed under other existing Federal, State, and local regulations and, therefore, would not be subject to this requirement.

Hotwork (§ 126.30)

1. One comment noted that the facility operator is responsible for welding or hotwork conducted at a facility. The comment also requested clarification regarding the definition of a ''facility operator.'' This comment asked if we would recognize a contractual delegation if a facility operator contractually makes another company, such as a vendor, responsible for compliance with these requirements.

We have noted this comment and have added a definition of ''facility operator'' to these regulations to help clarify their role. It is the responsibility of the facility owner or operator to ensure safety at their facility. The actions of any vendors or other contracted parties at a facility are subject to the control and oversight of the owner or operator while on the facility. Therefore, the owner or operator retains the ultimate responsibility for compliance with these regulations.

2. One comment requested that we change § 126.30(a) to allow welding or hotwork to be performed on a vessel when dangerous cargo is within the specified distances but stowed inside a container and the COTP is notified of the work before it begins.

We agree with this comment and have revised this paragraph.

Clarity of the final rule

1. You may notice some changes in the final rule that are not discussed in this section of the preamble. These are non-substantive changes intended simply to improve the clarity of our regulations.

Future rulemaking

1. Two comments addressed issues that are beyond the scope of this current rulemaking. They requested that we initiate a separate rulemaking to address concerns over the loading and unloading of Class 1 (Explosive) materials at waterfront facilities according to these regulations and Coast Guard policies.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 126.5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 126.5.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 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). A summary of the Regulatory Evaluation follows:

This rule amends 33 CFR part 126 to better address the hazards and precautions necessary for packaged dangerous cargo, which have changed significantly with the advent of containerization. As amended, part 126 applies only to waterfront facilities handling packaged and bulk-solid dangerous cargo. This rule incorporates up-to-date industry standards.

According to the Marine Safety Management System, there are 485 waterfront facilities that handle, store, and transfer dangerous cargo to and from vessels. We estimate that the maximum implementation cost of the rule is $304 per affected facility. This cost includes 4 warning signs per facility at $50 per sign, 1 international shore connection at $100 per international shore connection, and $4 for posting warning signs per entity. Some facilities, however, may already meet the requirements, and will not incur additional cost. The present value of the total cost of this rule during 2002 through 2012 is $111,425. The cost calculation is based on the assumption that half of the facilities would already have warning signs and international shore connections. No documented marine casualties were found in our databases that could have been prevented by the regulations; however, the rule will contribute to a higher level of marine safety at waterfront facilities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) and Executive Order 13272, Proposed Consideration of Small Entities, we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are 485 waterfront facilities that will be affected by this rule. We estimate that some facilities will not incur additional cost, while others will incur minimal cost. The maximum cost per facility is approximately $300.

Because this cost is minimal, even for a small entity, the Coast Guard certifies, under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided opportunity for public comment in the notice of proposed rulemaking (NPRM) entitled ''Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes within or Contiguous to Waterfront Facilities'' published on October 29, 1998, in the **Federal Register** (63 FR 57964). On January 12, 1999, we published a notice in the **Federal Register** reopening the comment period for this rulemaking (64 FR 1770). Additionally, the NPRM provided small businesses, organizations, or governmental jurisdictions a Coast Guard contact to ask questions concerning this rule's provisions.

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

Collection of Information

This rule calls for a new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection-of-information consists of posting warning signs at all designated waterfront facilities as required in § 126.15(a)(3). These signs must meet the requirements of the National Fire Protection Association (NFPA) 307.

No comments were received regarding the collection-of-information requirement.

This rule amends an existing Office of Management and Budget (OMB) approved collection, OMB control number 1625–0016 (formerly 2115–0054), that expires on November 30, 2004. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection-of-information. OMB has not yet completed its review of, or approved, the changes to this collection. Therefore, § 126.15(a)(3) in the final rule will not become effective until approved by OMB. We will publish a document in the **Federal Register** announcing OMB's approval and the effective date of that section.

You are not required to respond to a collection-of-information unless it displays a currently valid OMB control number.

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 Executive Order 13132 and have determined that it does not have implications for federalism under that Order.

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 concern 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, or 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 considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule concerns handling and storage procedures and will contribute to a higher level of marine safety at waterfront facilities. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 126

Explosives, Harbors, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 126 as follows:

PART 126—HANDLING OF DANGEROUS CARGO AT WATERFRONT FACILITIES

■ 1. The authority citation for part 126 continues to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.

■ 2. Revise the part heading to read as set forth above.

§§ 126.01, 126.05, 126.07, 126.09 and 126.10 [Removed]

■ 3. Remove §§ 126.01, 126.05, 126.07, 126.09 and 126.10.

■ 4. Add § 126.1 to read as follows:

§ 126.1 What does this part apply to?

This part applies to waterfront facilities handling packaged and bulk-solid dangerous cargo and to vessels at those facilities.

■ 5. Add § 126.3 to read as follows:

§ 126.3 Definitions.

As used in this part—

Break-bulk means packages that are handled individually, palletized, or unitized for purposes of transportation, as opposed to materials in bulk and containerized freight.

Bulk means without mark or count and directly loaded or unloaded to or from a hold or tank on a vessel without the use of containers or break-bulk packaging.

Captain of the port or *COTP* means the officer of the Coast Guard, under the command of a District Commander, is designated by the Commandant for the purpose of giving immediate direction to Coast Guard law enforcement activities within an assigned area.

Cargo of particular hazard means any of the following:

(1) Division 1.1 and 1.2 explosives, as defined in 49 CFR 173.50, for which a permit is required under 33 CFR 126.17.

(2) Ammonium nitrate products, division 5.1 (oxidizing) materials listed in 49 CFR 176.410, for which a permit is required under 49 CFR 176.415.

(3) Division 4.3 dangerous when wet products as defined in 49 CFR 173.124, in excess of 60 mt.

(4) Division 2.3 and 6.1 poison inhalation hazard products as defined in 49 CFR 173.115 and 173.132, respectively.

(5) Class 7 highway route controlled quantity radioactive material or fissile material, controlled shipment, as defined in 49 CER 173.403.

Commandant means the Commandant of the United States Coast Guard.

Container means a reusable container that has a volume of 1.81 cubic meters (64 cubic feet) or more, is designed and constructed to permit being lifted with its contents intact, and is intended primarily for containment of packages (in unit form) during transportation.

Dangerous cargo means all hazardous materials listed in 49 CFR parts 170 through 179, except those materials preceded by an ''A'' in the Hazardous Materials Table in 49 CFR 172.101 and all cargo listed in 46 CFR part 148.

Designated dangerous cargo means Division 1.1 and 1.2 explosives as defined in 49 CFR 173.50.

Designated waterfront facility means a waterfront facility designated under § 126.13 for the handling, storing, loading, and discharging of any hazardous material(s) subject to the Dangerous Cargoes Regulations (49 CFR parts 170 through 179), except for those materials preceded by an ''A'' in the Hazardous Materials Table in 49 CFR 172.101 and for those materials carried as bulk liquids.

Facility of particular hazard means a designated waterfront facility that is authorized to handle a cargo of particular hazard.

Facility operator means the person or company who owns, operates, or is responsible for the operation of a waterfront facility.

Net tons means net weight in tons.

Net weight, in reference to material in a package, tank, or container, means the weight of the contents of a package, tank, or container and does not include the weight of any packaging material or containing devices.

Transport unit means a transport vehicle or a container.

Waterfront facility means all piers, wharves, and similar structures to which a vessel may be secured; areas of land, water, or land and water under and in the immediate proximity to these structures; buildings on or contiguous to these structures; and the equipment and materials on or in these structures or buildings. The term does not include facilities directly operated by the Department of Defense.

■ 6. Add § 126.5 to read as follows:

§ 126.5 Incorporation by reference: Where can I get a copy of the publications mentioned in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, we must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Vessel and Facility Operating Standards Division (G–MSO–2), room 1210, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part, and the sections affected, are as follows:

American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700 West CONSHOHOCKEN, PA 19428–2959:	
ASTM F–1121, Standard Specification for International Shore Connections for Marine Fire Applications, 1987 Edition	126.15
National Fire Protection Association (NFPA), One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101:	
NFPA 10, Standard for Portable Fire Extinguishers, 1998 Edition	126.15
NFPA 13, Standard for the Installation of Sprinkler Systems, 1996 Edition	126.15
NFPA 14, Standard for the Installation of Standpipe and Hose Systems, 1996 Edition	126.15
NFPA 30, Flammable and Combustible Liquids Code, 1996	126.15
NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994 Edition	126.30
NFPA 70, National Electrical Code, 1996	126.15
NFPA 307, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves, 1995 Edition	126.15

■ 7. Add § 126.12 to read as follows:

§ 126.12 How do I request the use of an alternative method of complying with a requirement in this part?

(a) An owner or operator of a waterfront facility may request that the COTP allow the use of an alternative method of complying with a requirement in this part.

(b) The request must establish, to the COTP's satisfaction—

(1) That compliance with the requirement is economically or physically impractical; and

(2) That the alternative requested provides an equivalent or greater level of safety.

(c) The COTP examines the request and provides an answer, in writing, within 30 days of receipt of the request.

■ 8. Revise § 126.15 to read as follows:

§ 126.15 What conditions must a designated waterfront facility meet?

(a) All designated waterfront facilities must meet the following:

(1) *Fire extinguishing equipment.* Fire extinguishing equipment, such as automatic sprinklers, hydrants, hose connections, and firefighting water supplies must be available and maintained in adequate quantities and locations. Fire extinguishing equipment must meet State and local laws. In the absence of applicable State and local laws, fire extinguishing equipment must meet NFPA 10, 13, 14, and 307. (Incorporated by reference, see § 126.5.)

(2) *Fire appliances.* The location of all fire appliances, such as hydrants, standpipes, hose stations, fire extinguishers, and fire alarm boxes must be conspicuously marked and readily accessible according to NFPA 10, 13, 14, and 307.

(3) *Warning signs.* Warning signs must be constructed and installed according to NFPA 307, chapter 7–8.7.

(4) *Lighting.* If the facility transfers dangerous cargo between sunset and sunrise, it must have outdoor lighting that adequately illuminates the transfer work area. The lighting must be installed and maintained according to NFPA 70 (Incorporated by reference, see § 126.5.) and must be located or shielded so that it cannot be mistaken for an aid to navigation and does not interfere with navigation on waterways.

(5) *International shore connection.* If the facility conducts cargo operations involving foreign-flag vessels, the facility must have an international shore connection meeting ASTM F–1121. (Incorporated by reference, see § 126.5.)

(6) *Access to the facility.* Whenever dangerous cargo is transferred or stored on the facility, access to the facility must be limited to—

(i) Personnel working on the facility or vessel;

(ii) Delivery and service personnel authorized to conduct their business;

(iii) Coast Guard and other Federal, State, and local officials;

(iv) Local emergency personnel, such as police officers and firemen; and

(v) Other persons authorized by the owner or operator of the facility.

(7) *Security measures.* Guards must be stationed, or equivalent controls acceptable to the COTP must be used, to deter and detect unlawful entrance; to

detect and report fire hazards, fires, and releases of dangerous cargoes and hazardous materials; to check the readiness of protective equipment; and to report other emergency situations at the facility.

(8) *Coast Guard personnel.* At any time, Coast Guard personnel must be allowed to enter the facility to conduct inspections or board vessels moored at the facility.

(9) *Material handling equipment, trucks, and other motor vehicles.* When dangerous cargo is being transferred or stored on the facility, material handling equipment, trucks, and other motor vehicles operated by internal combustion engines must meet the requirements of NFPA 307, chapter 9.

(10) *Smoking.* Smoking is allowed on the facility where permitted under State or local law. Signs must be posted marking authorized smoking areas. ''No Smoking'' signs must be conspicuously posted elsewhere on the facility.

(11) *Rubbish and waste material.* All rubbish, debris, and waste materials must be placed in adequate receptacles.

(12) *Adequacy of equipment, materials, and standards.* The COTP may determine that any equipment, material, or standard is not reasonably adequate under the circumstances. If so, the COTP informs the owner or operator in writing and provides an opportunity for the owner or operator to have the deficiency corrected.

(b) All designated waterfront facilities that handle dangerous cargo, not in transport units, must also meet the following:

(1) *Arrangement of cargo, freight, merchandise, or material.* Cargo, freight, merchandise, and other items or material on the facility must be arranged to provide access for firefighting and clearance for fire prevention according to NFPA 307, chapter 8–5.

(2) *Portable fire extinguishers.* Each facility must have and maintain, in adequate quantities and locations, portable fire extinguishers that meet the requirements of NFPA 10. These extinguishers must be inspected and maintained in accordance with NFPA 10.

(3) *Electrical systems.* All new electrical equipment and wiring installed on the facility must be of the same type and installed as specified under NFPA 70. All defective or dangerous electrical equipment and wiring must be promptly repaired, replaced, or permanently disconnected.

(4) *Heating equipment and other sources of ignition.* Open fires and open-flame lamps are prohibited on the facility. Heating equipment must meet NFPA 307, chapter 9–4.

(5) *Maintenance stores and supplies.* Hazardous material(s) used in the operation or maintenance of the facility may be stored only in amounts necessary for normal operating conditions. These materials must be stored in compartments that are remote from combustible material; constructed to provide safe storage; and kept clean and free of scrap materials, empty containers, soiled wiping rags, waste, and other debris. Flammable liquids must be stored according to NFPA 30, chapter 4. (Incorporated by reference, see § 126.5.)

(c) All designated waterfront facilities that handle dangerous cargo in transport units must also meet the following:

(1) *Terminal yards.* Terminal yards must conform to the standards in NFPA 307, chapter 5.

(2) *Containers.* Containers packed with dangerous cargo that are vertically stacked must be stacked no more than four high.

■ 9. In § 126.27—

■ a. Revise paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3), and (b)(7);

■ b. Remove paragraph (b)(8);

■ c. Revise paragraphs (d) through (i); and

■ d. Add paragraphs (j) through (l) to read as follows:

§ 126.27 General permit for handling dangerous cargo.

* * * * *

(b) You must notify the COTP before you handle, store, stow, load, discharge, or transport, in the net weight amounts specified, the following dangerous cargo, except when contained within transport units or railroad or highway vehicles being transported across or on the waterfront facility solely for transfer to or from a railroad-car ferry, highway-vehicle ferry, or carfloat:

(1) Class 1, Division 1.3 and Division 1.5 (Explosive) materials, with a net explosive quantity in excess of 36,400 kg (40 net tons) at any one time.

(2) Class 2, Division 2.1 (Flammable Gas) materials in bulk packaging; or Division 2.3 (Poison Gas) materials in excess of 72,800 kg (80 net tons) at any one time.

(3) A Class 7 (Radioactive) material in a highway route controlled quantity, as defined in 49 CFR 173.403.

* * * * *

(7) A bulk shipment of a cargo of particular hazard.

* * * * *

(d) Break-bulk dangerous cargo must be segregated according to 49 CFR 176.83(a) through (c). No separation is required for break-bulk dangerous cargo in limited-quantity packaging.

(e) Transport units and portable tanks containing dangerous cargo must be segregated according to 49 CFR 176.83(a), (b), and (f). The requirements for vertical segregation and for on-deck, horizontal segregation in 49 CFR 176.83(f) apply. No separation is required for transport units containing dangerous cargo only in limited quantity packaging.

(f) Break-bulk dangerous cargo must be segregated from transport units containing dangerous cargo according to 49 CFR 176.83(e).

(g) Solid dangerous bulk cargo must be separated to prevent the interaction of incompatible materials in the event of an accident. Cargo not required to be segregated, when in break-bulk form, is not required to be segregated, when in bulk form. Dangerous cargo in break-bulk form must be segregated from solid dangerous cargo in bulk according to 49 CFR 176.83.

(h) Materials that are dangerous when wet (Division 4.3), water-soluble oxidizers (Division 5.1), and corrosive solids (Class 8) must be stored in a manner that prevents them from coming into contact with water.

(i) Corrosive liquids (Class 8) and liquid oxidizers (Division 5.1) must be handled and stored so that, in the event of a leak from their packaging, they would not come in contact with organic materials.

(j) Dangerous cargo stored on the facility must be arranged in a manner that retards the spread of fire, such as by interspersing dangerous cargo with inert or fire retardant material.

(k) Dangerous cargo stored on the facility, but not intended for use on the facility, must be packaged, marked, and labeled according to 49 CFR parts 171 through 180, as if the cargo was in transportation.

(l) Class 7 (Radioactive) material must be stored as specified in 49 CFR 173.447.

■ 10. Add § 126.30 to read as follows:

§ 126.30 What are the conditions for conducting welding and hotwork?

(a) The facility operator must ensure that all welding or hotwork conducted at the facility meets the requirements of this section. Each operator of a vessel moored to the facility must ensure that all welding or hotwork conducted on the vessel meets the requirements of this section.

(b) The COTP may require an operator of a facility or of a vessel moored at the facility to notify the COTP before conducting welding or hotwork. Regardless of whether or not the COTP required notice, the facility operator must notify the COTP before conducting

welding or hotwork on a vessel when containerized dangerous cargo is located within the distances listed in paragraph (f) of this section.

(c) Before conducting welding or hotwork, flammable vapors, liquids, or solids must be completely removed from any container, pipe, or transfer line being worked on.

(d) Before conducting welding or hotwork on tanks, tanks used for storage of flammable or combustible substances must be tested and certified gas free.

(e) All welding and hotwork must be conducted according to NFPA 51B. (Incorporated by reference, see § 126.5.)

(f) Welding or hotwork is prohibited during gas freeing operations within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, within 30.5 meters (100 feet) of explosives, or within 15.25 meters (50 feet) of other hazardous materials.

(g) If the welding or hotwork is on the boundary of a compartment (*i.e.*, bulkhead, wall, or deck), a fire watch, in addition to that called for in NFPA 51B, must be stationed in the adjoining compartment.

(h) Personnel on fire watch must have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(i) All safety precautions in relation to purging, inerting, or venting for all hotwork on containers must be followed.

(j) All local laws and ordinances must be followed.

(k) If a fire or other hazard occurs, all cutting, welding, or other hotwork equipment must be shut down.

Dated: September 8, 2003.

T.H. Gilmour,

Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–23667 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–02–045]

RIN 1625–AG54 (Formerly RIN 2115–AG54)

Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Viasca Knoll 915 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this facility significantly reduces the threat of allisions, oil spills and releases of natural gas. This rule prevents all vessels from entering or remaining in the specified area around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: This final rule is effective October 27, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–02–045] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915'' in the **Federal Register** (68 FR 9611). We received two comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll 915 (VK 915), located at position 29°06′27.46″ N, 87°56′37.14″ W.

The safety zone established by this rule is in the deepwater area of the Gulf of Mexico. For the purposes of this rule the deepwater area is considered to include waters of 304.8 meters (1,000 feet) or greater in depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and up to a distance of 200 nautical miles from the baseline. Vessels navigating in the area of the safety zone consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. An extensive system of navigational fairways is within the deepwater area. The fairways include the Gulf of Mexico East-West Fairway, the entrance/exit route of the Mississippi River, and the Mobile Bay approaches. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Chas R. Haven & Assoc., Inc., hereafter referred to as Haven Group requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the tension leg platform, Marlin owned by B.P. Amoco.

The request for the safety zone was made due to the high level of shipping activity around the facility and the safety concerns for both the personnel on board the facility and the environment. The Haven Group indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event. The Marlin is a high production oil and gas drilling facility producing approximately 41,000 barrels of oil per day, 310 million cubic feet of gas per day and is manned with a crew of approximately 80 people.

The Coast Guard reviewed Group Haven's concerns and agreed that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. This rule significantly reduces the threat of allisions, oil spills and natural gas releases and increases the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Comments and Changes

We received two comments on the proposed rule. One comment was received requesting that the owner of Marlin TLP, B.P. Amoco, be included in the rule.

The second comment expressed concerns over the Coast Guard establishing ''security zones'' around offshore platforms and the potential economic impact this type of zone may have on recreational and commercial fishing industries. Over the past several years the Coast Guard has established thirteen offshore safety zones in the Gulf of Mexico. Each zone, as well as this one, was requested in accordance with 33 CFR 147. The purpose of this offshore safety zone is clearly stated in

the ''Background and Purpose'' section of this rule. The purpose of offshore safety zones is also described in 33 CFR 147.1, which clearly states that they are ''to promote the safety of life and property on the facilities, their appurtenances and attending vessels, and on the adjacent waters within the safety zones.'' The Coast Guard has not proposed an offshore security zone for the Marlin TLP or any other offshore facility.

Since the rule will allow vessels less than 100 feet not engaged in towing within the zone and any vessel may request permission from the Eighth Coast Guard District Commander to enter the zone, the Coast Guard has made no substantial changes to the provisions of the proposed rule.

Regulatory Evaluation

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

The impacts on routine navigation are expected to be minimal because the safety zone does not encompass any nearby safety fairways.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Few privately owned fishing vessels and recreational boats/yachts operate in the area of the Marlin TLP because it is located far offshore, and alternate routes are available for those that do. Use of alternate routes may cause a minimal loss of time (estimated loss of four to ten minutes) to their destination depending on how fast the vessel is traveling. The Coast Guard expects the impact of this rule on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in

NEPA. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.827 to read as follows:

§ 147.827 Marlin Tension Leg Platform Safety Zone.

(a) *Description.* The Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll, Block 915 (VK 915), is located at position 29°6′27.46″ N, 87°56′37.14″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: August 19, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District Acting.

[FR Doc. 03–24367 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–002]

RIN 1625–AA00

Security Zones; San Francisco Bay, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the enforcement period of moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) that enter, are moored in, anchored in, or depart from the San Francisco Bay and Delta ports, California. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: The amendment to § 165.T11–077(f) in this rule is effective September 30, 2003. Section 165.T11–077, added at 68 FR 9006, February 27, 2003, and amended at 68 FR 32368, effective from 11:59 p.m. PST on February 10, 2003, to 11:59 p.m. PDT on September 30, 2003, as amended in this rule, is extended in effect to 11:59 p.m. PST on March 31, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–002] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2003, we published a temporary final rule (TFR) for High Interest Vessels (HIVs) in San Francisco Bay and Delta ports entitled ''Security Zones; San Francisco Bay, CA'' in the **Federal Register** (68 FR 9003) under § 165.T11–077. It has been in effect since February 10, 2003. On May 30, 2003, we published a change in effective period in the **Federal Register** (68 FR 32368) that extended the effective period of the above temporary final rule (TFR) to September 30, 2003.

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. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**, for the following reasons. The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). As a result, a heightened level of security has been established around all HIVs in San Francisco Bay and Delta ports. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to HIVs. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

The original temporary final rule was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in and near the San Francisco and Delta ports. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined that the need for continued security regulations exists. Therefore, delaying the effective date of this extension to the existing security zone would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of San Francisco Bay and Delta Ports areas would be jeopardized without the protection afforded by these security zones. The measures contemplated by this extension are intended to facilitate ongoing response efforts and prevent future terrorist attack. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all HIVs, their crews, the public and national security.

We plan to publish a notice of proposed rulemaking (NPRM) for a permanent HIV security zone. In that NPRM, we will propose to amend 33 CFR 165.1183, which was added by a final rule [COTP San Francisco Bay 02–019] published in the **Federal Register** (67 FR 79854) on December 31, 2002. 33

CFR 165.1183, ''Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California'', establishes security zones around cruise ships and tank vessels, but does not address HIVs. The forthcoming NPRM will clarify the classes of vessels sought to be encompassed in the section and will allow for a public comment period and for a final rule to be put into effect without an interruption in the protection provided by the original temporary rule that established HIV security zones. Section 165.1183 will remain in effect until amended by a future rule.

The measures contemplated by this extension to the original temporary final rule are intended to facilitate ongoing response efforts and prevent future terrorist attack. The Coast Guard will utilize the extended effective period created by this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay. Therefore, this revision preserves the status quo within the Ports while permanent regulations are developed.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent to U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against an HIV would have on the public interest, the Coast Guard is extending the effective period of security zones around and under HIVs entering, departing, moored or anchored within the San Francisco Bay and Delta ports. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against HIVs. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on an HIV would have on the crew and passengers on board, and surrounding area and communities, security zones are prudent for these types of vessels.

As of today, the need for security zones around HIVs still exists. This temporary final rule will extend for 6 months the effective period of security zones that were set to expire September 30, 2003. The security zones will now expire on March 31, 2003. This will allow the Coast Guard time to publish a notice of proposed rulemaking in the **Federal Register**, which will include a public comment period, and for a final rule to be put into effect without there being an interruption in the protection provided by HIV security zones.

Discussion of Rule

On December 31, 2002, we published the final rule [COTP San Francisco Bay 02–019] adding § 165.1183, ''Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California'' in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels. A forthcoming NPRM, under docket COTP San Francisco Bay 03–002 will propose to amend section 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels. The Coast Guard will utilize the extended effective period of the HIV security zones created by the TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay.

This TFR extends the effective period of the current security zones around all HIVs that are anchored, moored or underway within the San Francisco Bay and Delta ports. A security zone is automatically activated when any HIV passes shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8; LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively, and remains in effect while the vessel is underway, anchored, or moored within the San Francisco Bay and Delta ports. When activated, this security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the HIV passes seaward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8; LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively, on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

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).

Although this regulation restricts access to the waters encompassed by the security zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative; and (iv) vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

The sizes of the zones are the minimum necessary to provide adequate protection for HIVs, their crews and passengers, other vessels operating in the vicinity of HIVs, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking an HIV in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during HIV transits, which will last for approximately 30 minutes.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. As discussed above, the security zones will affect the following entities some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the waterways encompassed by the zones. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. When a HIV is at anchor, vessel traffic will have ample room to maneuver around the security zones. In addition, vessels may receive authorization to transit through these security zones on a case-by-case basis. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in

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

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise paragraph (f) in temporary § 165.T11–077, to read as follows:

§ 165.T11–077 Security Zones; High Interest Vessels, San Francisco Bay and Delta ports, California.

* * * * *

(f) *Effective period.* This section is effective at 11:59 p.m. PST on February 10, 2003, and will terminate at 11:59 p.m. PST on March 31, 2004.

Dated: September 11, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–24365 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC90

Glen Canyon National Recreation Area, PWC Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Glen Canyon National Recreation Area, Utah and Arizona. This rule implements the provisions of the National Park Service (NPS) general regulation authorizing parks to allow the use of PWC by promulgating special regulations. The *NPS Management Policies 2001* provides that individual parks should determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, overall management objectives, and consistent with the criteria of the NPS for managing visitor use.

EFFECTIVE DATE: This rule becomes effective September 26, 2003.

ADDRESSES: Mail inquiries to Kitty L. Roberts, Superintendent, Glen Canyon National Recreation Area, P.O. Box 1507, Page, Arizona 86040.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW, Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority To Regulate Recreational Use

The NPS is granted broad statutory authority under various acts of Congress to manage and regulate water activities in areas of the National Park System. 16 U.S.C. 1, 1a–2(h) and 3. The NPS's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) authorizes the NPS to ''regulate the use of Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Congress has also emphasized that the ''authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the national park system and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.'' 16 U.S.C. 1a–1. The appropriateness of a visitor use or recreational activity will vary from park to park. NPS Management Policies states that ''the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values.'' (1.4.3). NPS Management Policies provide further that, ''preserving park resources and values unimpaired is the core, or primary responsibility of NPS managers * * *. In cases of doubt as to impacts of activities on park natural resources, the Service will decide in favor of protecting the natural resources.'' (4: 1).

The Organic Act and the other statutory authorities of the NPS vest the NPS with substantial discretion in determining how best to manage park resources and provide for park visitors. ''Courts have noted that the Organic Act is silent as to the specifics of park management and that under such circumstances, the NPS has broad discretion in determining which avenues best achieve the Organic Act's mandate * * *. Further, the NPS is empowered with the authority to determine what uses of park resources are proper and what proportion of the park resources are available for each use'' *Bicycle Trail Council of Marin* v. *Babbitt,* 82 F.3d 1445, 1454 (9th Cir. 1996), quoting *National Wildlife Federation* v. *National Park Service,* 669 F. Supp. 384, 390 (D. Wyo. 1987). In reviewing a challenge to NPS regulations at Everglades National Park, the court stated, ''The task of weighing the competing uses of Federal property have been delegated by Congress to the Secretary of the Interior * * *. Consequently, the Secretary has broad discretion in determining how best to protect public land resources.'' *Organized Fisherman of Florida* v. *Hodel,* 775 F.2d 1544, 1550 (11th Cir. 1985), *cert. denied,* 476 U.S. 1169 (1986).

Regulation of PWC Use

Over the years, NPS areas have been impacted with new, and what often prove to be controversial, recreational activities. These activities tend to gain a foothold in NPS areas in their infancy, before a full evaluation of the possible impacts and ramifications that expanded use will have on the area can be initiated, completed, and considered. PWC use fits this category.

PWC use emerged and gained popularity in park units before the National Park Service could initiate and complete a full evaluation of the possible impacts and ramifications. Although PWC use remains a relatively

new recreational activity, it has occurred in 32 of 87 park units that allow motorized boating.

The National Park Service first began to study PWC in Everglades National Park. The studies showed that PWC use over emergent vegetation, shallow grass flats, and mud flats commonly used by feeding shore birds damaged the vegetation, adversely impacted the shore birds, and disturbed the life cycles of other wildlife. Consequently, managers at Everglades National Park determined that PWC use was inconsistent with the resources, values, and purposes for which the park was established. In 1994, the National Park Service prohibited PWC at Everglades National Park by a special regulation 36 CFR 7.45(e)(8) (59 FR 58781, Nov. 15, 1994).

Other public entities have taken steps to limit, and even to ban, PWC use in certain waterways as national researchers study more about the effects of PWC use. At least 34 states have either implemented regulations or considered regulating the use and operation of PWC (63 FR 49314, Sept. 15, 1998). Several Federal agencies, including the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, have managed PWC differently than other classes of motorized watercraft.

When the National Oceanic and Atmospheric Administration regulated the use of PWC in most national marine sanctuaries, it was sued by the PWC Industry Association (PWIA). As a result, the Court of Appeals for the District of Columbia declared such PWC-specific management to be valid. In *PWC Industry Association* v. *Department of Commerce,* 48 F.3d 540 (D.C. Cir. 1995), the court ruled that an agency can discriminate and manage one type of vessel (specifically, PWC) differently than other vessels if the agency explains its reasons for the differentiation.

In February 1997, the Tahoe Regional Planning Agency, the governing body charged with ensuring no derogation of Lake Tahoe's water quality, voted unanimously to ban all vessels using two-stroke, internal combustion engines, including PWC, because of their adverse effects on water quality. Lake Tahoe's ban began in 2000.

Historically, the National Park Service grouped PWC with all other vessels. Thus, people could use PWC within a park service unit when the unit allowed the use of other vessels. However, by 1998 the National Park Service had closed seven units to PWC and other motorized vessels use through the implementation of horsepower restrictions and park-specific regulations such as those promulgated by Everglades National Park. At that time, the National Park Service was reevaluating its management of PWC use, based on its responsibilities under the Organic Act and increased concerns for public safety.

In May 1998, the Bluewater Network, a private, independent, non-profit organization, filed a petition urging the National Park Service to initiate a rulemaking process to prohibit PWC use throughout the national park system. In response to the petition the National Park Service proposed a specific PWC regulation premised on the notion that PWC differ from conventional watercraft in terms of design, use, safety record, controversy, visitor impacts, resource impacts, horsepower-to-vessel ratio, and thrust capacity (63 FR 49312, Sept. 15, 1998).

The National Park Service envisioned the servicewide regulation as an opportunity to evaluate impacts of PWC use before authorizing their use. The preamble to the servicewide regulation calls the regulation a ''conservative approach to managing PWC use'' that considered resource concerns, visitor conflicts, visitor enjoyment, and visitor safety. During a 60-day public comment period, the National Park Service received nearly 20,000 comments on the proposed regulation. As a result of public comments and further review, the National Park Service issued a final rule (36 CFR 3.24(a), 64 FR 15077, March 21, 2000) that prohibited PWC use in park units, unless authorized by a special regulation.

In the 2001 Management Policies, the NPS adopted its new servicewide policy for PWC. As stated in section 8.2.3.3, ''PWC use is prohibited unless it has been identified as appropriate for a specific park.'' PWC use can only be authorized based on ''an evaluation of the park's enabling legislation, resources and values, other visitor uses, and overall management objectives [that] confirms that PWC use is appropriate and consistent'' with other NPS management goals and objectives.

PWC Use at Glen Canyon National Recreation Area

Motorboats and other watercraft such as houseboats, ski boats, fishing boats, and powerboats have been used in Glen Canyon National Recreation Area since its establishment in 1972. PWC use has emerged at the recreation area with the introduction of this type of vessel in the 1980s. Prior to 2000, PWC use was allowed throughout Glen Canyon National Recreation Area except in the waters designated closed in the Superintendent's Compendium, which included portions of the Colorado, Dirty Devil, Escalante, and San Juan rivers. These closures were for the protection of environmental values and the avoidance of conflict between users.

Glen Canyon National Recreation Area is located within the states of Arizona and Utah. Both states enforce their laws on Lake Powell within their respective state jurisdictions. The National Park Service adopts (36 CFR 3.1) and enforces these state regulations together with the NPS boating regulations in part 3 of Title 36 of the Code of Federal Regulations. The United States Coast Guard Regulations are also adopted in 36 CFR part 3.

On January 17, 2003, the National Park Service published a notice of proposed rulemaking for the operation of PWC at Glen Canyon National Recreation Area (68 FR 2466). The proposed rule for PWC use was based on alternative B (the preferred alternative) in the Glen Canyon National Recreation Area Draft Environment Impact Statement (DEIS). The DEIS was made available for public review on September 13, 2002 (67 FR 58071). The DEIS analyzed three alternatives for addressing PWC use at Glen Canyon National Recreation Area. Two of the alternatives would permit PWC use with certain restrictions through the development of special regulations. Alternative A would reestablish the limits on PWC use that existed prior to 2002 under the Superintendent's Compendium. Alternative B would impose additional restrictions on PWC use beyond what was proposed by alternative A. Alternative C would leave intact the existing 36 CFR 3.24 prohibition on PWC use within the recreation area. The 60-day public comment period for the proposed rule ended March 18, 2003.

A Final Environmental Impact Statement (FEIS) was made available to the public on May 16, 2003 (68 FR 26645). Some changes were made in the FEIS in response to the over 30,000 public and agency comments received on the DEIS. These changes are discussed below under ''Changes to the Final Rule.'' The FEIS includes a discussion of comments section that addresses all of the issues raised by commenters to the DEIS. A Record of Decision on the FEIS was signed by the National Park Service on June 27, 2003.

While Glen Canyon National Recreational Area was officially closed to PWC use on November 6, 2002, the closure was temporarily lifted for the summer season of May 10, 2003, through September 30, 2003 after an agreement between the Bluewater

Network and the Superintendent of Glen Canyon National Recreational Area. The lifting of the closure will allow the use of PWC on the majority of Lake Powell. The agreement, however, retained the restrictions in the 2002 Superintendent's Compendium and added closures from the mouth of San Juan River to the NRA boundary and north or beyond mile marker 108 of the Colorado River as measured from the Glen Canyon Dam to the NRA boundary.

Changes to the Final Rule

Some changes have been made in the FEIS and to the final rule. The alternatives presented in the DEIS were modified in the FEIS in response to comments received on the DEIS. The primary modifications to alternatives A and B in the FEIS include conducting a 3-year pilot study to identify and develop conflict resolution techniques and preparing a comprehensive lake management plan to address all uses of Lake Powell. Additionally, alternative B and the final rule were modified to include compliance with 2006 emission standards (described below) and to add an additional geographic restriction.

1. Alternative B includes strategies to better protect recreation area resources, improve visitor safety, and reduce conflicts. These strategies include conducting a 3-year pilot study to identify the techniques and area restrictions that would be most effective in reducing conflicts and preparing a comprehensive lake management plan addressing all uses. See the discussion below in the comments summary (*e.g.*, comment numbers 20 and 60) and in appendix C of the Draft and Final Environmental Impact Statement.

2. Alternative B, as reflected in this final rule, requires that PWC in the recreation area meet the 2006 U.S. Environmental Protection Agency emissions standards by the end of 2012 and in subsequent years. PWC not meeting the standards would no longer be permitted to operate within Glen Canyon National Recreation Area beginning in 2013. See the discussion below under number 17 in the comments discussion.

3. In the DEIS and NPRM a PWC would have been allowed to operate at flat wake speed on the Dirty Devil River upstream of the Utah Highway 95 bridge to a point where measurable downstream current is encountered. In the FEIS and final rule, PWC use on the Dirty Devil River upstream of the Utah Highway 95 bridge is prohibited. In addition the reference to Coyote Gulch in the proposed rule has been changed in the final rule to reference Coyote Creek. Coyote Creek is the correct geographic name for the area discussed and this non-substantive change was made for clarification.

Discussion of Economic Effects of PWC Use

In the Economic Analysis, NPS estimates that the total impact of the proposed alternatives for regulating PWC use in Glen Canyon on Page, Arizona, output is $23.8 to $39.9 million for Alternatives A and B and $0 for Alternative C (because this alternative maintains baseline conditions) in the first year after the rule implementation. The increases in output under Alternatives A and B are substantial compared to the size of the regional economy, ranging from about 11 to 18 percent of regional personal income. Area businesses would be likely to experience large positive impacts under this final rule.

Summary of Comments

A proposed rule was published for public comment on January 17, 2003 (68 FR 2,466–76), with the comment period lasting until March 17, 2003. The National Park Service received 2,170 timely written responses regarding the proposed regulation. Of the responses, 1,973 were form letters in 5 separate formats and 197 were individual letters. Of the 197 individual letters received 180 were from individuals, 5 from businesses, 8 from organizations and 4 from public agencies. Within the analysis, the term ''commenter'' refers to an individual, business, or organization that responded. The term ''comments'' refers to statements made by a commenter.

General Comments

1. Some commenters, including the PWC Industry Association (PWIA), advocate that any regulation or restriction on PWC by the National Park Service should be uniformly applied to all motorized recreational vessels. Allowing other motorized vessels to operate in some of the proposed restricted areas would undermine the purported goals of reducing user conflicts and allowing for solitude and quiet. Closing these river areas to PWC, and not other motorized vessels, would be discriminatory.

NPS Response: With this final rule the National Park Service is adopting special regulations to manage PWC use at Glen Canyon. The alternatives listed in the Final Environmental Impact Statement were based upon the best information available. As noted by the commenter, the management actions under modified preferred alternative B for the San Juan, Escalante, Colorado, and Dirty Devil Rivers will be implemented to reduce visitor conflicts with river rafters, fishermen, and backcountry hikers; promote opportunities for quiet and solitude; and ensure visitor safety. Following completion of the Final Environmental Impact Statement, it remains within National Park Service authority to prescribe similar use restrictions on all watercraft, if appropriate.

Glen Canyon expects to proceed with a Lake Management Plan in the near future, which will further examine vessel management as a whole on the waters of Lake Powell and its tributaries.

2. A number of commenters, including PWIA, proposed that the flat-wake zone should apply to all motorized vessels. Restricting only PWC to flat-wake speeds presents a safety hazard if other vessels are permitted to operate at significantly faster speeds.

NPS Response: Under a combination of NPS regulations and State laws and regulations all vessels are required to operate at flat wake speed in certain areas. In the case of the Escalante River, the NPS is requiring in this special regulation all PWCs to operate at flat wake speed because of the narrow waterways, blind corners and high use of the area, which would otherwise be a safety concern. The NPS has already adopted this requirement for all vessels in the Superintendent's Compendium for the same reasons.

3. Many commenters questioned why the focus of the analysis was on PWC alone when other motorized watercraft have similar or greater impacts on park resources.

NPS Response: The focus was on PWC because of the new management approach taken by the NPS. As a result, PWC use would be prohibited unless Glen Canyon NRA adopted a special regulation. The EIS and rulemaking were not designed to determine if PWC caused more environmental damage to park resources than other boats, but rather to determine if PWC use was consistent with Glen Canyon National Recreation Area's enabling legislation and management goals and objectives. As stated in the ''Purpose of and Need for Action'' chapter in the Draft and Final Environmental Impact Statements, the overall objective for the EIS and rulemaking is to evaluate a range of alternatives and strategies to manage PWC use, with the goal of ensuring protection of recreation and resource value. The impacts of other motorized watercraft could be considered in a future Lake Management Plan.

4. One commenter stated that the analysis should include examples of

best management practices to avoid or reduce pollution to the recreation area. They encourage the National Park Service to ''use all available practices to meet the intent of guidance issued by the Council on Environmental Quality (CEQ) integrating pollution prevention opportunities in National Environmental Policy Act (NEPA) planning, documents and decisions (Pollution Prevention and the National Environmental Policy Act, CEQ, January 1993).'' Pertinent provisions of executive orders should be addressed in the Final Environmental Impact Statement and the future Lake Management Plan referenced in this rulemaking.

NPS Response: Each impact topic contains a summary of the applicable laws and regulations that were applied in the analysis of the effects of PWC on Glen Canyon National Recreation Area resources and values.

The NPS and the marina operators have developed a Spill Prevention, Control, and Countermeasure Plan (SPCC) that provides recommendations and requirements to prevent environmental damage resulting from the spills of oil and fuel. These plans are required by the Environmental Protection Agency (EPA) as stated in 40 CFR part 112. All marina operators and National Park Service must comply with these requirements and *Best Management Practices* contained within the Spill Prevention Plan. The CEQ requires NPS units to comply with the recommendations and requirements established by the NPS Hazardous Waste Management and Pollution Prevention Team and the EPA. An SPCC is required by EPA to protect the environment from oil spills. Glen Canyon NRA requires the current concessionaire (ARAMARK) to have a SPCC plan for each marina fueling operations. The SPCC plans comply with CEQ guidance the commenter mentions by following the EPA standards for spill protection and prevention. In addition, placards are displayed at marinas and educational materials are made available to recreation area visitors to inform boat operators about proper fueling of vessels and containers.

The National Park Service manages the water of Lake Powell in accordance with the water quality standards of Arizona and Utah. Water quality in Lake Powell is regulated by the Arizona and Utah Departments of Environmental Quality under water quality standards and regulations that are promulgated in the *Arizona Administrative Code* (R18–11–107) and *Utah Administrative Code* (R317–2), respectively. Consistent with Federal regulations, Arizona and Utah have established numerical and narrative standards that protect existing and designated uses of state waters and implement the antidegradation requirements. Compliance with the numerical standards for water quality is determined at control points that are specified in the regulations.

In the case of the Draft and Final Environmental Impact Statements, three alternatives for PWC management were analyzed. The alternatives also consider means to mitigate the effects of PWC on park resources and values, including limiting use in areas where management objectives strive to create a visitor experience without intrusion of these vessels or where important park resources must be protected. Alternative B (modified preferred alternative) in the Final Environmental Impact Statement includes mitigation measures to protect other park users from potential conflicts with PWC (refer to the modified preferred alternative section in the ''Environmental Consequences'' chapter), as well as other measures to protect species of special concern and water and air resources. Requiring that PWC used in the recreation area after 2012 be compliant with the EPA 2006 emission standards for gasoline marine engines under alternative B (modified preferred alternative) will further mitigate impacts of these vessels on recreation area resources. The National Park Service finds that the modified preferred alternative will not result in an impairment of park resources and values for which the Glen Canyon National Recreation Area was established.

5. Several commenters stated that limiting access to PWC users is against the intent which Glen Canyon National Recreation Area was created.

NPS Response: The authorizing legislation for Glen Canyon National Recreation Area was considered when developing alternatives to be analyzed in the Draft and Final Environmental Impact Statements. The ''Introduction'' section in the ''Purpose of and Need for Action'' chapter in the Draft and Final Environmental Impact Statements states that the overall objective for the regulation and EIS is to evaluate a range of alternatives and strategies to manage PWC use, to protect recreation and resource values. This objective was derived from the enabling legislation for Glen Canyon National Recreation Area. As further stated in this section, a thorough analysis for the management of PWC was also provided under each alternative following the guidance of the National Park Service Management Policies (2001).

Both the servicewide regulation and the National Park Service Management Policies acknowledge that park units proposing to continue PWC use must complete an analysis of impacts from PWC use. This analysis includes a thorough review of the enabling legislation of the unit and its management objectives, and the resources and values potentially affected by continued PWC use.

In the case of the Draft and Final Environmental Impact Statements, three alternatives were analyzed under various PWC scenarios. The alternatives consider various ways of mitigating the effects of PWC on park resources and values, including limiting use in areas where management objectives strive to create a visitor experience without intrusion of these vessels or where important park resources must be protected. Alternative B (modified preferred alternative) in the Final Environmental Impact Statement includes mitigation measures to protect other park users from potential conflicts with PWC (refer to the discussion for alternative B in the ''Environmental Consequences'' chapter), as well as other measures to protect species of special concern and water and air resources.

As a result, the alternatives presented in the Draft and Final Environmental Impact Statements protect resources and values while providing for a number of different recreational opportunities for park visitors to enjoy at Glen Canyon National Recreation Area. The NPS concluded that limiting PWC access in certain areas is necessary and appropriate for achieving management objectives in those areas of Glen Canyon NRA.

6. Several comments were received citing the Organic Act and the mission of the National Park Service to leave the resources and wildlife ''unimpaired for future generations.'' A number of letters were received stating Federal law clearly prohibits activities that impair or derogate the recreation area resources.

NPS Response: We agree. The ''Summary of Laws and Policies'' section in the ''Environmental Consequences'' chapter summarizes the three overarching laws that guide the National Park Service in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of PWC on Lake Powell resources and values can be found under ''Impairment Analysis'' in the ''Methodology'' section of the ''Environmental Consequences''

chapter. For each resource topic, the Final Environmental Impact Statement established thresholds or indicators of magnitude of impact. An impact approaching a ''major'' level of intensity is one indication that impairment could result. For each impact topic, when the intensity approached ''major,'' the interdisciplinary planning team would consider mitigation measures to reduce the potential for ''major'' impacts, thus reducing the potential for impairment.

The National Park Service finds that alternative B (modified preferred alternative) presented in the Final Environmental Impact Statement will not result in an impairment of park resources and values for which the Glen Canyon National Recreation Area was established.

Rulemaking Process Comments

7. Several commenters questioned how a proposed rule supporting a preferred alternative can be issued before a Final Environmental Impact Statement and a Record of Decision have been issued.

NPS Response: In January of 2003, the National Park Service published a proposed rule that proposed the preferred alternative in the Draft Environmental Impact Statement. The National Park Service approach was to allow the public an opportunity to view the preferred alternative in a regulatory form and comment on that proposed rule similar to the comment period for the Draft Environmental Impact Statement. Upon review and consideration of those comments, and in conjunction with the comments received on the Draft Environmental Impact Statement, the National Park Service has modified the final rule and the Final Environmental Impact Statement. Publishing the proposed rule after the DEIS allowed the National Park Service to maintain flexibility in the regulatory options in contrast to if it had waited until after the Record of Decision was issued, since that would have been a final decision document.

8. One commenter stated that until the NEPA process is complete, the rulemaking does not perform the minimal duty of informing the agency or the public about the environmental effects of the proposed rule.

NPS Response: Federal rulemaking requires that the National Environmental Policy Act be addressed, along with various other laws and Executive Orders, in the proposed and final rules. Again, the National Park Service approach was to allow the public to comment on the preferred alternative identified in the Draft Environmental Impact Statement in a regulatory form. This is the purpose of issuing proposed rules; to give the public a preliminary review of a proposed action with opportunity to comment on that proposal, provide additional or new information, and point out elements which the commenter feels are accurate or inaccurate. To that end, the agency considers those comments and modifies the final rule as necessary or even re-proposes a new rule if significant changes need to be made. The National Park Service cannot issue a final rule until a Record of Decision is issued under the NEPA portion of the Compliance section of the rule. The final rule is the National Park Service's final conclusion and must be consistent with the Record of Decision.

9. One commenter stated that there is a problem with publishing a final rule prior to completing the NEPA process and that this would tend to nullify the intent of NEPA by revealing that the National Park Service has already reached a conclusion prior to actually performing the required analysis.

NPS Response: We agree, but the commenter may misunderstand what was published in the **Federal Register**. The National Park Service has only published and taken comment on a proposed rule. This document is the final rule and it is being published now that the NEPA process is complete and a Record of Decision has been issued.

10. One commenter stated that the statement ''The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act * * *'' is clearly not true since the environmental analysis has not been completed. There has only been a Draft Environmental Impact Statement with no response to the concerns raised by the public.

NPS Response: NEPA and CEQ guidelines require that agencies publish a Draft Environmental Impact Statement as indicated by the commenter. Because the issuance of a Draft Environmental Impact Statement is consistent with these guidelines, and neither NEPA nor CEQ address the timing related to issuance of a proposed rule, the National Park Service is in accordance with NEPA.

11. One commenter is concerned that earlier public comments on the Draft Environmental Impact Statement were not taken into consideration in the rulemaking process and cites that the current discussion in the final rulemaking does not address any of the public concerns.

NPS Response: Again, the commenter seems to be under the impression that the National Park Service had previously issued a final rule on PWC management at Lake Powell. The National Park Service has issued a proposed rule which solicits comments on the proposed action (implementation of the preferred alternative identified in the Draft Environmental Impact Statement). The National Park Service did not take any comments received on the Draft Environmental Impact Statement into consideration when writing the proposed rule. Comments on the Draft Environmental Impact Statement and the proposed rule were incorporated in the Final Environmental Impact Statement, which was released on May 12, 2003, and were considered and are discussed in this final rule.

12. One commenter questioned the process by which the public is informed of the availability of the proposed rule stating that they had not received notice of the publication of the rule and that it was not available in the press. The commenter further states that organizations or individuals who participate in the NEPA process should be kept informed of the progression of the process through the Draft Environmental Impact Statement, Environmental Impact Statement, Decision Notice, opportunities for appeal, and the opportunity to pursue a legal remedy.

NPS Response: On January 17, 2003, Glen Canyon issued a press release informing the public of the publication of the proposed rule in the **Federal Register** (68 FR 2466). In addition, the **Federal Register** is available to all members of the public online at any time and in libraries throughout the country. The National Park Service does not routinely notify individuals personally about stages in the rulemaking process. The National Park Service has many parties interested in the issue of PWC and relies on local and national media and the National Recreation Area's website to provide notification of various milestones included in planning, environmental compliance, and rulemaking to interested parties.

Comments Related to Consultation and Coordination

13. One commenter requested that the National Park Service include all of Bluewater Network's previous letters and correspondences sent to Glen Canyon concerning PWC activity in the administrative record for the rule.

NPS Response: The ''Methodology and Purpose'' section at the beginning of volume 2 of the Final Environmental Impact Statement provides a detailed explanation of how public comments were received, reviewed, and ultimately

responded to in the document. The criteria for determination of substantive comments is found in CEQ regulations (40 CFR 1503.4) and amplified in *Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision Making* (section 4.6 (B)). Public comments, as well as other factors, were used by Glen Canyon National Recreation Area to modify the ''preferred alternative'' (alternative B) that was analyzed in the Draft Environmental Impact Statement. A description of the modified preferred alternative B is found in the ''Alternatives'' chapter of the Final Environmental Impact Statement and in this document.

The National Park Service acknowledges the 30,000 citizen comments submitted on the National Park Service PWC rulemaking. The administrative record for this rulemaking includes all comments and most documents received from the public, including those comments submitted by the Bluewater Network.

Comments Related to Alternatives

14. A number of commenters disagreed with the restrictions on the Escalante River presented in the analysis.

NPS Response: Under current PWC management as described in the Superintendent's Compendium 2002, PWC travel upstream in the San Juan, Escalante, Colorado, and Dirty Devil Rivers is restricted. The management actions under the modified preferred alternative B, for the San Juan, Escalante, Colorado, and Dirty Devil Rivers, will additionally restrict travel downstream on the same stretches of river. Access will also be restricted in both directions on 10 additional miles of the Dirty Devil River and 23 miles on the Colorado River. We understand the disagreement with the restrictions, but based on the best available information developed in the EIS process, the NPS has determined these restrictions are necessary on the rivers to reduce visitor conflicts with river rafters, fishermen, and backcountry hikers; promote visitor enjoyment; and ensure visitor safety.

15. Many commenters stated that the selection of alternative B provides no significant benefit, except to areas at the extreme ends of the tributaries where there is no significant visitation (and now no access). Additional alternatives are available that allow PWC's access to enjoy Lake Powell without destroying the experience of other users.

NPS Response: The NPS *Director's Order 12: Conservation Planning, Environment Impact Analysis and Decision-Making* (NPS 2001b) states that a full range of alternatives must be examined, and that ''the alternatives carried forward for analysis must meet project objectives to a large degree, although not necessarily completely.'' The National Park Service believes the Draft and Final Environmental Impact Statements contain a reasonable range of alternatives under this definition.

In addition, the modified preferred alternative B provides for a three-year pilot study to further evaluate PWC use areas. Potential restrictions of PWC use in other locations of the recreation area will be evaluated during the pilot study. The purpose of the pilot study and a description of how it will be implemented are provided in appendix C of the Final Environmental Impact Statement.

16. Several commenters suggested that the alternative selected should incorporate increased education, strict enforcement, and testing and licensing of PWC operators and that they would support increased fees for these improvements or institution of a permit system.

NPS Response: The states of Arizona and Utah establish the current operational age of PWC users. The licensing of boat or PWC operators rests with the State governments and is not an appropriate administrative activity for the Federal government. Currently, the State of Utah provides an extensive and nationally recognized mandatory education program for PWC users between the ages of 12 and 17. The National Park Service will continue to support this existing program. In addition, the modified preferred alternative B will provide enhanced educational materials and programs highlighting PWC issues to distribute to the public familiar with the State of Utah education program and for those from out of state and will seek funding to increase visitor protection staff.

17. Several commenters suggested that the alternative selected should ban the use of conventional two-stroke technology and only allow clean technology engines that would meet 2006 EPA standards.

NPS Response: The NPS considered an immediate ban of conventional two-stroke technology but, based upon the findings of the EIS process, determined it was not necessary to protect the resource and would impose an unreasonable economic burden on PWC users. Instead, the modified preferred alternative B of the Final Environmental Impact Statement requires that PWC used at Glen Canyon NRA must meet the EPA 2006 emission standards by the end of 2012. PWC not meeting the standards would no longer be allowed to operate in Glen Canyon National Recreation Area beginning in 2013.

The National Park Service expects that by 2012, most PWC owners would already be in compliance with the 2006 EPA marine engine standards. The economic impact on visitors as a result of the 2012 engine type restrictions is expected to be small. PWC manufacturers currently offer models that are compliant with the EPA 2006 standards, and new PWC purchased after 2006 will all meet the EPA emission standards. The average operating life of a PWC is 5 to 10 years, depending upon the source (see the ''General Methodology'' section in the ''Environmental Consequences'' chapter of the Final Environmental Impact Statement). As a result, it is expected that the majority of noncompliant PWC would no longer be in operation when the engine restrictions proposed under the modified preferred alternative B take effect at the end of 2012.

18. Several commenters suggested restricting speed in narrow canyons or making major canyons flat-wake zones to reduce visitor conflicts and to improve visitor safety.

NPS Response: NPS considered these measures, but concluded they were not necessary because of existing restriction under state law. Under Utah State law, all boaters must operate at flat-wake speeds or idle speed within 150 feet of another boat, a person in or floating on the water, a waterskier (except those being towed), a shore fisherman, a launching ramp, a dock, or a designated swimming area. Arizona State law requires all boaters to operate at flat-wake speeds within 60 feet of another vessel. The modified preferred alternative B addresses signing, buoys, and boater education that will enhance other watercraft operators' observance of safe boating practices.

In addition, the modified preferred alternative B currently provides for a three-year pilot study to further evaluate PWC-use areas. Potential restrictions of PWC use in other locations of the recreation area will be evaluated during the pilot study. The purpose of the pilot study and a description of how it will be implemented are provided in appendix C of the Final Environmental Impact Statement.

19. Many commenters suggested additional alternatives to restrict PWC to specific areas such as: Wahweap Bay, Warm Creek Bay, the areas near Hall's Crossing and Bullfrog Bay, and the Colorado River from Warm Creek to the Dam. At a minimum, restrict their usage to the less remote areas of the lake, *e.g.*, the main channel and certain large bays.

NPS Response: The alternatives in the Draft and Final Environmental Impact Statements were developed based upon the best information available. The area restrictions under the modified preferred alternative B on PWC use were identified because of the levels of non-motorized and passive uses that pose present or potential conflicts. Alternative B currently provides for a three-year pilot study to further evaluate PWC use areas. Potential restrictions of PWC use in other locations of the recreation area will be evaluated during the pilot study. The pilot study will provide the recreation area managers with additional information to evaluate reasonable measures to manage all lake uses and activity until a lake management plan is developed for Glen Canyon NRA. The purpose of the pilot study and a description of how it will be implemented are provided in appendix C of the Draft and Final Environmental Impact Statements.

20. One commenter was opposed to implementing a pilot study because it would result in PWC users avoiding areas zoned as flat-wake and would concentrate their use in other areas of the lake thereby reducing the ability of the study to adequately assess conflict between PWC and other users.

NPS Response: The National Park Service must manage Glen Canyon National Recreation Area to protect the recreational opportunities available at the park, as well as the natural resources found in the lake and surrounding lands. To accomplish this, a lake management plan will be developed which will provide the tools necessary to analyze activities that take place on the lake and determine if unacceptable impacts are occurring. Even though there is rationale and need to consider management of PWC under a separate decision-making framework, there remains the need to examine all uses of the lake collectively. As identified in the cumulative effects analysis under each impact topic, there are many management issues involving the mix of lake uses that will require additional planning in a lake management plan.

Modified alternative B provides for a three-year pilot study to further evaluate PWC-use areas. Potential restrictions of PWC use in other locations of the recreation area will be evaluated during the pilot study. The pilot study will provide recreation area managers the best available data to manage all lake uses and activity until a lake management plan is developed. There are no guarantees or predictable outcome for what open areas PWC users will or will not utilize during the initial implementation of this regulation. The data collected will be analyzed based on the best information available to National Park Service managers at that time. The purpose of the pilot study and a description of how it will be implemented are provided in appendix C of the Draft and Final Environmental Impact Statement.

Comments Related to Visitor Conflicts and Safety

21. One commenter stated that children under the age of 16 that operate PWC is a safety issue that should be addressed.

NPS Response: The National Park Service does not currently have regulations which set a minimum vessel operator age. The States of Arizona and Utah do have current operational age requirements for PWC users and those requirements are enforced by Park Rangers at Glen Canyon as NPS requirements pursuant to 36 CFR 3.1. Arizona regulations require children younger than 12 years of age to be accompanied by an adult when operating a PWC. Children older than 12 years can operate a PWC alone. Utah laws and regulations state that children between 12 and 15 can operate PWC after completing a mandatory boating education course if they remain within visual parental supervision. Children ages 16 to 17 must complete a mandatory boating education course to operate a PWC without supervision. The NPS thinks the current age requirements are acceptable and do not pose a safety issue on Lake Powell.

Comments Related to Recreation Area Operations

22. A number of commenters stated that the problem with PWC is that there are sufficient laws in place to protect visitors, however these laws are not being enforced and that there needs to be more enforcement of these laws.

NPS Response: We disagree that the existing laws are not being enforced. NPS agrees that there is a need for more enforcement and an element of the modified preferred alternative B is to seek increased funding to provide additional law enforcement at Glen Canyon National Recreation Area to enforce the existing regulations. An increased number of law enforcement officers on the lake would have the added advantage of increasing the number of visitor contacts on the lake to prevent unsafe behavior. In addition, an active information and education program, also an element of the modified preferred alternative B, will help to reduce the need for enforcement actions. However, the NPS is working with law enforcement officers from Arizona and Utah to provide a proper level of enforcement of the existing laws.

23. One commenter asked how the Federal noise standard which states ''Operating a vessel in or upon inland waters so as to exceed a noise level of 82 decibels measured at a distance of 82 feet (25 meters) from the vessel is prohibited,'' would be enforced in the areas such as confined canyons and rivers where there is no point 25 meters from the shore.

NPS Response: Federal and State law enforcement staff within Glen Canyon NRA enforce the Federal sound standard in areas where a distance of 82 feet (25 meters) occurs such as marina launch areas and large open bays. In confined canyons and river areas where 82 feet is not obtainable, a stationary sound level test can determine if a motorboat engine is exceeding acceptable sound levels. Federal and State protection staff have the ability to enforce excessive or unusual noise within confined areas utilizing the SAE J2005 and SAE J1970 as stated within the State of Utah Boating Laws and Rules.

Comments Related to Water Quality

24. Based on the analysis of water quality in the Draft Environmental Impact Statement which stated that some hydrocarbons can adsorb onto suspended soil particles and settle out, one commenter requested that any monitoring plan should therefore include sediment chemistry monitoring in marinas and sediment deposition areas down current for the constituents most likely to settle, including poly-aromatic hydrocarbons (PAH). Additionally, to understand whether current sediment conditions and aquatic health of the benthic community is altered from the historical baseline, the monitoring plan should include benthic population sampling, and bioassay of these sediments. The Final Environmental Impact Statement should identify whether there is potential for these sediment deposition areas to be dredged. If so, it may merit implementing management practices to reduce or eliminate release of toxic constituents from PWC use.

NPS Response: Text has been added to the Final Environmental Impact Statement in the ''Alternatives'' section to describe the monitoring plan that was added to the modified preferred alternative B. A report is presently being completed for a study that was done to determine the chemical content of sediment at the main inflow area of the Colorado River. Funding is currently being sought for another study to do the

same evaluation in the San Juan and Escalante inflow/sediment deposition areas. These studies will identify the hydrocarbon content of these sediments. In addition, another study is currently being conducted that examines the dynamics of sediment re-suspension and reworking in the Colorado River inflow. The monitoring plan that will be developed for the lake will include PAHs, as well as other gasoline constituents that may become re-suspended when there is down-cutting of the sediment deposits as a result of lowering lake level. The monitoring program that will be developed will also consider the most likely places for contamination, such as marina areas and areas downstream from major sediment depositional zones, if appropriate. The data from a study examining visitor effects (including hydrocarbon contamination) in three canyons will be used to develop water quality baselines for Glen Canyon National Recreation Area. A lake-wide monitoring plan will then be developed using the data gathered and the methods tested in these three studies (sediment, three canyons, and synoptic). Plan development will be guided by the Technical Advisory Committee that was formed in 1996 by the National Park Service, the Departments of Environmental Quality Water Divisions of Utah and Arizona, and other interested organizations and agencies (including the EPA) to protect Lake Powell water quality. The Technical Advisory Committee provides an excellent vehicle for establishing standards and protocols for Lake Powell that are acceptable to the EPA and states and that conform to the states' regulations developed under authority of the Clean Water Act. Benthic population sampling and bioassay may be included in the monitoring plan as determined to be appropriate by the Technical Advisory Committee. Dredging to remove sediment is not contemplated by the National Park Service.

25. One commenter stated that the water quality assessment uses assumptions that result in overestimation of potential PWC hydrocarbon emissions to the water in Lake Powell, amounting to the ''most extreme adverse conditions.'' For example, benzo(a)pyrene concentrations in gasoline range from 0.19 to 2.8 mg/kg, and the highest value was used. Similarly, MTBE concentrations in gasoline were range from 0 to 15%, but only the highest figure was used.

NPS Response: In an effort to determine ''what could happen,'' a conservative methodology was constructed using the highest concentration of known pollutants commonly found in gasoline. The values referenced by the commenter were incorporated into the analysis to determine if the mixing layers of Lake Powell have adequate volume to mitigate the effects of carbureted two-stroke PWC engines, as well as all other two-stroke watercraft. Using this conservative approach, it was determined that the water quality impacts generated by PWC use would be negligible to minor, and that no water quality criteria for designated uses of the lake would be violated. The National Park Service is satisfied that incorporation of the given component concentration in gasoline has served this approach. Table 10 in the Final Environmental Impact Statement shows the benchmarks used in the evaluation for each pollutant.

In addition the modified preferred alternative B in the Final Environmental Impact Statement will provide an important step toward substantially reducing petroleum-related pollution by requiring PWC used in the recreation area after 2012 be 100% compliant with the EPA 2006 emission standards for gasoline marine engines. Based on the analysis presented, the National Park Service finds that the modified preferred alternative B (including the provision for continued PWC use) will not result in an impairment of park water quality.

26. One commenter stated that the assessment represents an outdated look at potential emissions from an overstated PWC population of conventional two-stroke vessels, and underestimates the accelerating changeover to four-stroke and newer technology two-stroke models. Sales of these newer models have already overtaken conventional two-stroke PWC. The commenter estimates that the changeover to PWC engines that meet the requirements of the EPA 2006 and California Air Resources Board (CARB) 2008 emission standards is occurring much more rapidly than EPA and the National Park Service have estimated. The commenter believes that the amounts of unburned fuel released at Lake Powell will decline rapidly, achieving a reduction from the 1998 baseline levels of more than 50% by 2006 and approximately 80% by 2012. The Draft Environmental Impact Statement, in contrast, only estimated a 25% reduction in hydrocarbon emissions from PWC in the Glen Canyon National Recreation Area by 2006, and only a 50% reduction by 2012.

NPS Response: In the water quality analysis, the assumption made by the commenter was that clean technology engines (any engine not using carbureted two-stroke technology) would be 90% cleaner than the carbureted two-stroke engines. This is based on two assumptions made by the commenter. The first is based on confidential, proprietary PWC sales and forecast data prepared by PWC manufacturers. No supporting data was supplied with the comment.

The commenter states that the data indicates that the conversion of PWC models to cleaner engines is occurring more rapidly than anticipated in the 1996 EPA analysis of the effects of the conversion rule. While the National Park Service has no reason to doubt that PWC conversions are proceeding at a greater rate than forecast by the EPA, there is no survey or similar data available at this time indicating the engine conversion at Glen Canyon is proceeding at a faster or slower rate than the EPA forecast. Therefore, use of the EPA rates is considered appropriate. The second assumption by the commenter is that 75% of the PWC at Glen Canyon would have engines that comply with the CARB conversion rule that requires marine engine manufacturers implement the EPA emission targets sooner than those outlined by the Federal rule. The commenter assumes that 50% of PWC users at Glen Canyon will be from California, and will have CARB-compliant watercraft. And that an additional 20% will have CARB-compliant vessels. The National Park Service concurs that many watercraft users at Glen Canyon have California registered PWC, and they will meet CARB standards. However, there is no data relative to PWC at Glen Canyon to confirm the 75% figure assumed by the commenter.

The National Park Service emissions calculations are conservative only in the sense that they do not specifically account for watercraft that have already been or will be converted to meet EPA or CARB standards. Under the modified preferred alternative B, PWC used in the recreation area after 2012 would be 100% compliant with the EPA 2006 emissions standards for the manufacturing of gasoline marine engines.

27. One commenter stated that the Draft Environmental Impact Statement acknowledges that hydrocarbon compounds evaporate rapidly from water and are subject to chemical breakdown, but then states that attenuating factors such as evaporation and photodegradation are not included

in the calculations. In addition, the EPA has confirmed that studies show most unburned gasoline and gasoline additives emitted from two-stroke marine engines evaporate rapidly from water (The Effects of Marine Engine Exhaust Emissions on Water Quality, Summary of Findings of Various Research Studies, EPA 1994).

NPS Response: In 1994, the EPA released a public memorandum entitled ''The Effects of Marine Engine Exhaust on Water Quality: Summary of Findings of Various Research Studies.'' This document summarized 11 research papers and presents volatilization rates and dilution ratios for observable effects such as taste, odor, and generation of oil film. At temperatures commonly found in Lake Powell during the summer boating season, the majority of gasoline and oil components would be volatilized within 1.2 hours. Although a portion of the gas/oil mixture may accumulate in the water column, water quality testing at Lake Powell did not reveal detectable levels of most PAH components. Given that the contaminants were largely undetectable, specific cumulative analysis of the PWC contribution is not possible at this time. The text has been changed in the Final Environmental Impact Statement to include information on volatility consistent with the above-referenced EPA memorandum.

28. One commenter requested that the Final Environmental Impact Statement list all designated uses for the water in Lake Powell.

NPS Response: Designated uses for the water of Lake Powell, as defined by Arizona and Utah, include drinking, recreation, agricultural, and aquatic life. The complete list of designated uses of the water as defined by Arizona and Utah are listed in the ''Water Quality'' section of the ''Affected Environment'' chapter of the Draft and Final Environmental Impact Statements.

29. One commenter wanted the presence and location of drinking water intakes addressed in the analysis.

NPS Response: There are two drinking water intakes within the lake, one near Hite, Utah and one at Glen Canyon Dam that serves the town of Page, Arizona. The intake near Hite is approximately ½ mile north (upstream) of the marina when the lake level is above 3,630 feet above sea level. The Glen Canyon Dam intake is under the jurisdiction of the Bureau of Reclamation. The National Park Service has no access to the site, and it is not responsible for monitoring at this location. The locations of the drinking water intakes near Hite Marina and at Glen Canyon Dam has been added to the ''Affected Environment'' chapter in the ''Water Quality'' section in the Final Environmental Impact Statement.

30. One commenter stated that presenting average values for water quality testing samples infers complete mixing of lake waters.

NPS Response: Inclusion of average values was not intended to infer that lake waters are mixed, but rather to show the reader a mean value for relative comparison to measured maximum and minimum values. The ''average values'' have been removed from Table 8 in the Final Environmental Impact Statement.

31. One commenter stated that the need to sample Wahweap Marina is called to attention based on the results of the Bullfrog Marina sample where benzene concentrations were elevated.

NPS Response: Under the modified preferred alternative B, the National Park Service would implement a water quality monitoring program at Lake Powell. This program will be guided by the Technical Advisory Committee, and is detailed in the Final Environmental Impact Statement description of the modified preferred alternative B in the ''Alternatives'' chapter. Locations selected for ongoing testing will be chosen to maximize use of data in making appropriate management decisions.

32. The EPA requested that monitoring should also be done in drinking water intakes to assure that drinking water standards are met for Arizona and Utah.

NPS Response: Water quality monitoring at the Hite drinking water intake would take place under all alternatives addressed in the Final Environmental Impact Statement. The water quality monitoring program would be directed by the Technical Advisory Committee, formed in 1996 to protect Lake Powell's water quality. The plan would ensure that water quality complies with State regulations and criteria and is consistent with requirements of the Clean Water Act.

The drinking water intake at Glen Canyon Dam, which serves the town of Page, Arizona, is under the jurisdiction of the Bureau of Reclamation. The National Park Service has no authority to access this site to obtain water quality samples. Potable water obtained from Lake Powell is tested after treatment at both the Hite and Page water treatment plants. The localities are responsible for the final quality of the drinking water, in addition to the State requirements for the quality of the drinking water source. The ''Water Quality'' section in the ''Affected Environment'' chapter of the Final Environmental Impact Statement has been revised to include additional information regarding the drinking water intakes at Hite and Page.

33. The EPA questioned the presence of a ''rainbow sheen'' in the marinas and whether this was a violation of Utah Water Quality Standards (R317–2, Utah Administrative Code).

NPS Response: The Utah Department of Environmental Protection, Water Quality Division, was contacted for interpretation of Water Quality Standard R317–2. The term ''oil scum'' is not intended to equate to the ''rainbow sheen'' commonly seen on water surfaces at fueling stations and marinas. Although these sheens could be considered minor violations, they are generally localized and transient and therefore not considered a significant enough concern to warrant pursuit of a violation by either state. The sheen itself was not tested during water quality sampling for this assessment. Suggestions regarding sampling locations and techniques would be incorporated into the water quality monitoring program proposed under the modified preferred alternative B in the Final Environmental Impact Statement. Recognizing that the presence of the sheen does indicate degraded water quality, the text in the Final Environmental Impact Statement has been changed to acknowledge temporary, localized degradation of water quality. Because the sheen results from combined marina and fueling activities, it was not possible to determine the specific PWC related contribution to this transient water quality issue.

The modified preferred alternative B in the Final Environmental Impact Statement includes mitigation measures to further protect park waters. Under the modified preferred alternative, PWC used in the recreation area after 2012 will be 100% compliant with the EPA 2006 emission standards for the manufacturing of gasoline marine engines, further reducing petroleum-related pollution. Based on the analysis presented, the National Park Service finds that the modified preferred alternative B will not result in an impairment of park water quality.

34. The EPA suggests that the analysis should address whether PWC use and fueling of vessels in marinas that result in a visible sheen or numeric concentrations would be in violation of Arizona water quality standards. If so, the water quality effects should be designated ''major'' rather than ''negligible to minor''.

NPS Response: Lake Powell is an Arizona Tier II water body, and existing water quality ''shall be maintained and

protected. Water quality shall not be lowered to a level that does not comply with applicable water quality standards'' (Arizona Administrative Code R18–11–107; see the ''Water Quality'' section, ''Affected Environment'' chapter). The National Park Service water quality sampling performed at Lake Powell did not show that any Arizona water quality criteria were exceeded. As shown in Table 9 in the ''Affected Environment'' chapter, Arizona standards are not as stringent as those for Utah, with the exception of naphthalene and these standards are not violated. There would be no violation of Arizona water quality standards set for the designated uses of Lake Powell under any of the alternatives analyzed in this assessment. The EIS text has been edited in the ''Water Quality'' section of the ''Environmental Consequenses'' chapter to clearly state this finding.

The modified preferred alternative B in the Final Environmental Impact Statement includes mitigation measures to further protect water quality in the recreation area. The modified preferred alternative will provide an important step toward substantially reducing petroleum-related pollution by requiring all PWC used in the recreation area after 2012 to be 100% compliant with the EPA 2006 emissions standards for the manufacturing of gasoline marine engines.

35. One commenter stated that cumulative effects of the build up of oil and gasoline in the lake over time were ignored. The estimated emission into the lake assumed that on a daily basis, 100% of hydrocarbon emissions volatilized daily. The emissions from PWC contain oil, and oil does not volatilize completely.

NPS Response: The commenter has misinterpreted the DEIS. NPS never stated that 100% of the hydrocarbon emissions volatized daily. Although most polycyclic aromatic hydrocarbon components are volatile, some of these hydro pollutants do accumulate in the water column. The text has been changed and is included in the Final Environmental Impact Statement to provide more information on volatility and on the evaporation and half-life rates applicable to the waters of Lake Powell. Detailed discussions on this issue can be found in the Final Environmental Impact.

36. One commenter stated that the analysis lacks a description of a detailed long-term monitoring plan to ensure evaluation of impacts on the aquatic system.

NPS Response: Modified alternatives A and B addressed in the Final Environmental Impact Statement include implementation of a water quality monitoring project. The project will be directed at developing a detailed long-term monitoring plan by the Technical Advisory Committee, formed in 1996 to protect Lake Powell's water quality. The plan will ensure that water quality complies with State regulations and criteria and is consistent with requirements of the Clean Water Act. The monitoring project will benefit from the findings of two recently completed studies on the chemical content of lake waters and sediment in the Colorado River inflow area and three side canyons. An additional study on the dynamics of sediment re-suspension in the Colorado River inflow is currently underway. Funding is also being sought for additional studies in the San Juan and Escalante River inflow areas. The monitoring project will include hydrocarbon content of sediments and PAH content of lake waters. Benthic population studies may be included, if deemed necessary by the Technical Advisory Committee. The results of the monitoring project will be used to guide management decisions for any impacts on the aquatic system on Lake Powell.

37. One commenter requested that the water quality section of the Final Environmental Impact Statement should clearly state whether activities regulated by the National Park Service are violating, or have the potential to violate, State-adopted, EPA-approved water quality standards under the Federal Clean Water Act.

NPS Response: We agree with the comment and the FEIS was revised to show that there are no violations or potential violations of State or Federal standards. The Utah Department of Environmental Quality, Water Quality Division, was contacted for clarification of the State's assessment of Lake Powell water quality. The division reported that the State has no concerns with regard to the 1.7 μg/L and 3.43 μg/L benzene concentration obtained near Bullfrog Marina during water quality testing. The drinking water intake near Hite Marina is approximately 0.25 mile upstream of the marina, and it is unlikely that gasoline components from the marina would migrate in this direction. Hite is also a smaller marina than Bullfrog, with much less boat traffic and fueling activities. Because of current water levels, Hite Marina is not currently operating. Water levels will need to increase significantly in Lake Powell before Hite Marina can return to full operation. In addition, the intake floats at approximately 12 feet below the water surface. Benzene is lighter than water, highly volatile, and has a half-life of approximately five hours. There are no water quality concerns by the State of Arizona since no drinking water is extracted from Lake Powell in Arizona.

The Final Environmental Impact Statement proposes a water quality monitoring program for modified alternatives A and B. This plan is outlined in responses to ''General Comments'' above.

The ''Water Quality'' section in the ''Affected Environment'' chapter has been changed in the Final Environmental Impact Statement to include new information on the drinking water intakes and on the jurisdiction over the two sites.

38. One commenter stated that the assessment of water quality is based on water column samples taken at 0.5 and 3 meter depths. Given that most constituents from watercraft exhaust or refueling spills will float on the water's surface, it would seem logical to collect water samples at the water's surface rather than 0.5 meters below to determine compliance with standards.

NPS Response: The objective of the sampling effort was to collect representative data that would be most useful for comparison to Clean Water Act water-quality criteria and standards, especially those promulgated for the protection of drinking water supplies and aquatic life. To meet these objectives, sample locations that represented mixed and homogeneous conditions after considering watercraft propeller and wake affects and naturally occurring wave action would yield date representative for these purposes. To determine appropriate sampling depths that would meet these criteria, the most recent body of literature on water pollution caused by motorized watercraft was reviewed and researchers in the field were sought and interviewed.

Through that review and those interviews the NPS determined that there is evidence that, for motorized vessel-expelled PAHs, completely mixed conditions occur at 3m depth. PAH concentrations that are found in completely mixed conditions are more representative of bioavailable concentrations for aquatic life and therefore more comparable to water quality criteria.

Additionally, concentrations of BTEX in particular were assumed to be much more variable at the surface than 0.5m below it and, therefore, concentrations at the water surface would be less representative. The assumption here was that due to vessel and wave action, mixing would be greater just below the surface rather than right at it. Previous research found that, at least at near-

shore locations, the 0.5m depth was a representative depth when taking this into consideration.

Lastly, most studies and long-term monitoring efforts conducted elsewhere were designed with sampling stations at 3m and/or 0.5 depths, thus allowing the Lake Powell results to be compared to results in these other water bodies.

39. One commenter stated that the numbers used to predict loading on the lake for future years assume a zero growth condition. A zero growth assumption is not realistic for the boating industry or Glen Canyon National Recreation Area. Glen Canyon National Recreation Area has plans to continue to develop projects that support the boating industry.

NPS Response: New estimates for changes in boat uses at Glen Canyon have been generated for the Final Environmental Impact Statement based on trends for National Park Service units with PWC usage throughout the United States. Over the last 10 years Glen Canyon NRA has experienced a decrease in boating use at about −2.6%. In order to give a variety of growth scenarios for the future, the effects of three differing growth scenarios are now described in the analysis: (1) Annual increase in use of 2% per year, (2) no change (flat rate), and (3) annual decrease in use of 2% per year. For a complete explanation of the change in use, *see* the ''Visitor Use and Experience'' section in the ''Affected Environment'' chapter in the Final Environmental Impact Statement.

40. One commenter stated that there was no conclusion as to how much of the water pollution could be attributed to PWC.

NPS Response: The conclusion on PWC hydrocarbon contribution relative to all watercraft is presented in the ''Environmental Consequences'' chapter of the Draft and Final Environmental Impact Statements. Using the methodology developed by the National Park Service Division of Environmental Quality (Bransom) and assumptions of the relative polluting capabilities of PWCs and other motorized vessels, PWC were estimated to contribute 50% of all hydrocarbon pollution to the lake.

41. One commenter performed calculations to determine the PWC contribution to lake pollution. Assuming PWC engines have four times the emission displacement into the water of other boats, a total contribution of 21% was obtained versus the NPS assumption of 50%.

NPS Response: Commenter's assumptions about engine sizes do not reflect the boating distribution data gathered for Lake Mead which was used as an estimate of use by engine type on Lake Powell. The ''Methodology and Assumptions'' section in the ''Environmental Consequences'' chapter of the Draft and Final Environmental Impact Statements explains the boat distribution and clearly shows the greatest percent of boat hours are generated by ''stern-drive'' or inboard/outboard engines. These engines are often comparable in size to automobile engines, not one-quarter the size of the typical PWC engine. Because the commenter did not consider the distribution of engine types in the recreation area, we believe that their conclusion that PWC contribute only 21% of the pollution into the lake is incorrect. Furthermore, the methodology used in the EIS analysis differed from the commenter's calculation in that the EIS methodology considered the pollution contribution to the lake by engine type (carbureted, two-stroke direct-injected, and four-stroke). The assumptions in the EIS methodology are that four-stroke and clean technology two-stroke engines deliver to the water 10% of the hydrocarbons of carbureted two-stroke engines.

42. One commenter suggested calculating two-stroke engine pollution contribution using fuel and engine oil purchases made at the lake's marinas.

NPS Response: Many boaters buy fuel and oil at locations other than the marina, and using the marina sales would not capture the total amount of petroleum products used on the lake by two-stroke or other engine types.

Comments Related to Air Quality

43. Commenters stated that the National Park Service did not consider that the changeover to four-stroke and two-stroke direct injection PWC engines to meet the requirements of the EPA 2006 and CARB 2008 emission standards is occurring much more rapidly than EPA and National Park Service has estimated. Amounts of emissions at Glen Canyon will accordingly continue to decline rapidly, achieving a reduction of approximately 90% by 2012.

NPS Response: All alternatives use the rate of conversion of the engines from carbureted two-stroke to clean engines consistent with the EPA rule, ''Final Rule for New Gasoline Spark-Ignition Marine Engines'' (EPA 1996). The National Park Service used the EPA data where it was assumed that 21.6% of the carbureted two-stroke engines in use in 1998 would be replaced by 2004 and that 58.4% would be replaced by 2012. The commenter's opinion is principally based on confidential, proprietary PWC sales and forecast data prepared by PWC manufacturers. This proprietary data was not supplied with the comment and, therefore, was not available to the National Park Service.

The commenter states that the data indicates that the conversion of two-stoke carbureted PWC models to cleaner direct-injection engines is occurring more rapidly than anticipated in the 1996 EPA analysis of the effects of the conversion rule. While the National Park Service has no reason to doubt that PWC conversions and sales may be proceeding at a greater rate than forecast by the EPA, there is no survey or similar data available at this time that indicates that the engine mix at Glen Canyon is proceeding at a faster or slower rate than the EPA forecast. Therefore, use of the EPA rates is considered appropriate in disclosing potential impacts on air quality. Under the modified preferred alternative B, PWC used in the recreation area after 2012 would be 100% compliant with the EPA 2006 emissions standards for the manufacturing of gasoline marine engines versus 58.4 percent estimated by EPA in 1996. The concessionaire is currently replacing any discontinued PWC with a new model that meets or exceeds the EPA 2006 standards. It is estimated that the concessionaire fleet would consist of PWCs meeting the EPA 2006 standards within the next three years.

PWCs rented outside the recreation area for use in the recreation area will also have to meet the EPA emission standards after 2012. Entrance to the recreation area will require all PWC to have EPA 2006 emission certification prior to entering the park.

44. One commenter expressed concern that PWC emissions are declining faster than forecasted by the EPA. The existing fleet of PWC has achieved a 25% reduction compared to hydrocarbon plus nitrogen oxides (HC + NO_X) emission levels before the EPA regulation became effective, and will achieve reductions greater than 80% by 2012.

NPS Response: The comment is principally based on two assumptions made by the commenter. The first is based on confidential, proprietary information regarding PWC sales and forecast data prepared by PWC manufacturers. No supporting data was supplied with the comment. The commenter states that the data indicates that the conversion of PWC models to cleaner engines is occurring more rapidly than anticipated in the 1996 EPA analysis of the effects of the conversion rule. While the National Park Service has seen that local rentals

of PWC have exceeded estimates for conversions and are proceeding at a greater rate than forecast by the EPA, there is no sales data available at this time indicating the engine conversion at Glen Canyon is proceeding at a faster or slower rate than the EPA forecast. Therefore, use of the EPA rates is considered appropriate, and use of an accelerated rate may be considered speculative without additional supporting data.

The second assumption by the commenter is that 75% of the non-rental PWC at Glen Canyon will have engines that comply with the CARB conversion rule for all years, which requires that marine engine emission reductions targeted by the EPA for 2006 be achieved in California by 2001. The California rule then requires further emission reductions by 2004 and 2008 (Title 13, California Code of Regulations, sections 2440–2448). The commenter assumes that 50% of the PWC users at Glen Canyon will be from California and all will have CARB-compliant watercraft, and that, because of manufacturing and sales efficiencies outside of California, an additional 25% of the Glen Canyon PWC users will have CARB-compliant watercraft. The National Park Service concurs that many watercraft users at Glen Canyon have California-registered PWC, and that they will meet the CARB standards. However, there is no data relative to PWC at Glen Canyon to confirm the 75% figure assumed by the commenter. The National Park Service emission calculations are conservative only in the sense that they do not specifically account for watercraft that have already been or will be converted to meet CARB standards. Under the modified preferred alternative B, PWC used in the recreation area after 2012 would be 100% compliant with the EPA 2006 emissions standards for the manufacturing of gasoline marine engines.

45. Continued PWC use on Lake Powell under the proposed rule will not pose any adverse health risks for park visitors under even the ''worst case'' airborne PAH concentrations that could theoretically be generated by the vessels.

NPS Response: The commenter submitted an analysis of PAH emissions at Glen Canyon to support the comment. The commenter's analysis uses many conservative assumptions and a pollutant dispersion model to conclude that PAH exposure to PWC users from PWC PAH emissions would be less than one thousandth of one percent (<0.001%) of an Occupational Safety & Health Administration (OSHA) limit for PAH exposure. Shoreline exposure would be even lower. OSHA published the limit as part of a discussion of safety and health related to coal tar pitch volatiles. The limit is for total PAH, and the comment in reference to OSHA for limits of coal tar volatiles does not apply in the context of the Glen Canyon PWC rule-making discussion. In addition, another relevant study concluded that there are some health effects associated with PAH emissions (see Environmental and Occupational Exposure to Toxic Air Pollutants from Winter Snowmobile Use in Yellowstone National Park, Kado *et al.* 2001). Therefore, the National Park Service cannot support a conclusion, as the commenter suggests, that PWC use at Glen Canyon would pose no adverse health risks from toxic air pollutant emissions.

46. One commenter believes that the analysis reference to moderate levels of air quality impacts from HC, NO_X, and carbon monoxide (CO) emissions associated with PWC use is incorrect and potentially misleading. The commenter believes that these emissions, even under the ''worst case'' scenario, would not pose a health risk for park visitors.

NPS Response: Emission levels shown in the Air Quality analysis tables in the ''Environmental Consequences'' chapter are not directly comparable with the emission levels submitted by the commenter, because the National Park Service Air Quality Division calculates emissions on an annual basis, and the commenter's calculations are for an average boating day during the boating season. Some assumptions made for National Park Service calculations are more conservative than those used for the commenter's calculations. The National Park Service assumed that the conversions from carbureted two-stroke engines to cleaner engines would occur at the rate forecast by the EPA. Based on the National Park Service model (presented in the tables as tons per year of estimated hydrocarbon and nitrogen oxide emissions for all alternatives), a 21.6% conversion is assumed from 1998 levels by 2004 and a 58.4% conversion by 2012. The commenter assumes a faster conversion. The commenter assumes that emissions would be reduced because a significant portion of PWC would be cleaner than EPA requirements due to compliance with the more restrictive California requirements. There is no data relative to PWC at Glen Canyon to confirm the 75% figure that is assumed by the commenter. The National Park Service emission calculations are conservative only in the sense that they do not specifically account for watercraft that have already been or will be converted to meet either CARB or EPA standards. Under the modified preferred alternative B, PWC used in the recreation area after 2012 would be 100% compliant with the EPA 2006 emissions standards for the manufacturing of gasoline marine engines, which would result in a substantial reduction in emissions. Using the EPA forecast rate of emission reductions in the National Park Service air quality emissions model, and assuming a 2% annual visitor growth rate, the PWC emissions associated with the modified preferred alternative would be up to 365 tons per year of HC + NO_X by 2012 and 2,955 tons per year of CO, which is considered by the National Park Service to be a moderate adverse effect.

47. One commenter stated the National Park Service analysis does not reflect the increase in nitrogen oxides emissions that are likely with the conversion to more four-stroke engines.

NPS Response: The Draft and Final Environmental Impact Statements do note in the ''Air Quality'' section of the ''Environmental Consequences'' chapter that nitrogen oxide emissions will increase with implementation of the EPA 1996 rule and the conversion to 4-strokes. However, there would be sizeable reductions in emissions such as VOC, HC, PM and CO and overall air quality in the recreation area would continue to be below national ambient air quality standards.

48. One commenter stated the National Park Service analysis does not reflect CARB research which found that four-stroke PWC emit more carbon monoxide (CO) pollution than do conventional two-stroke machines. The commenter states that the National Park Service should be concerned with any technology that emits large amounts of this pollution given the recent spike in carbon monoxide-related deaths at Glen Canyon National Recreation Area.

NPS Response: The CARB 2001 study, Outboard Engines and PWC Emissions to Air and Water: A Laboratory Study found that CO emissions from four-stroke outboard and PWC engines tested were lower than conventional two-stroke engines. The CARB results indicate that the carbureted two-stroke PWC engine tested emitted nearly three times the amount of carbon monoxide than did the four-stroke engine. Results also indicated that the four-stroke outboard engine emitted lower levels of carbon monoxide than two-stroke carbureted outboard engines with exception of the two-stroke 90 hp direct-injected engine, which emitted lower

levels than the four-stroke engine. In addition, the EPA emission test data from outboard marine engines indicates that carbon monoxide emissions from four-stroke engines are lower than conventional two-stroke technology engines (EPA 1996). Although the EPA final regulation on emission standards does not contain standards for carbon monoxide, it is expected that the engine technology changes which would be used to meet the EPA standards would result in some modest carbon monoxide reductions (EPA 1996). Under the modified preferred alternative B, PWC used in the recreation area after 2012 will be required to be 100% compliant with the EPA 2006 emission standards for the manufacturing of gasoline marine engines, which would result in a substantial reduction in total emissions. Although there would not be a significant reduction in carbon monoxide emissions over the next ten years, based on the National Park Service model, they would be reduced from 3,168 to 2,955 tons per year assuming a 2% annual increase in visitor use.

Carbon monoxide related fatalities that have occurred in the recreation area have been a result of exposure to extremely high levels of carbon monoxide in confined, poorly ventilated spaces such as under a boat swimming platform or near exhaust ports. The levels of carbon monoxide presented in the analysis represent carbon monoxide levels over the entire recreation area, dispersed in a large volume of air, and are based on year-long boating activity. There has only been one reported fatality caused by carbon monoxide poisoning at the recreation area involving a PWC. This individual died while being towed on his broken PWC behind a motorboat. Nationally, of the 701 boating fatalities reported in 2000, five deaths were attributed to carbon monoxide. None of these deaths involved PWC.

The National Park Service is concerned about fatalities at Glen Canyon National Recreation Area related to carbon monoxide poisoning. The park has an active and aggressive campaign to inform visitors to the recreation area of the risk of carbon monoxide poisoning from exposure to boat generators, engines, and gas appliances. This safety information is provided to visitors at entrance gates, visitor centers, recreation area headquarters, and on the recreation area Web site.

49. One commenter asked the National Park Service to disclose the derivation of the 21% average engine load as an assumption in the methodology of the air quality analysis.

NPS Response: The assumption of an average engine load of 21% for PWC was based on the activity data used in the EPA NONROAD model.

50. One commenter expressed concern over the inconsistencies in the Draft Environmental Impact Statement regarding the volatilization of pollutants to the air and water. This commenter stated that the text should use the same percentage for how much and which pollutants volatize in both the air and water quality impacts sections. No estimate of the percent that volatilizes is given in the water quality section. In the air quality section it is stated that up to 30% of the fuel from PWC is unburned and is discharged as gaseous hydrocarbons (Draft Environmental Impact Statement, p. 181). The numbers should be consistent for the analysis.

NPS Response: The Draft Environmental Impact Statement incorrectly stated that 30% of the fuel is exhausted into the air. However, the Final Environmental Impact Statement correctly states that up to one-third of the fuel delivered to the two-stroke carbureted PWC engine is unburned and discharged into the water instead of exhausted into the air. It is difficult to determine how much of the fuel is volatilized into the atmosphere. As stated in ''Methodology and Assumptions'' section under ''Air Quality,'' many organic pollutants that are initially dissolved in the water volatilize to the atmosphere, especially if they have high vapor pressures, are lighter than water, and mixing occurs at the air/water interface. It is difficult to assess the specific evaporation rates of exhaust pollutants from PWC because the rates will differ according to the ratio of gas to oil used, by fuel brand, by engine, and operating conditions such as temperature and water aeration.

In 1994, the EPA released a public memorandum entitled ''The Effects of Marine Engine Exhaust on Water Quality: Summary of Findings of Various Research Studies.'' This document summarizes 11 research papers and presents volatilization rates and dilution ratios for observable effects such as taste, odor, and generation of oil film.

At temperatures commonly found in Lake Powell during the summer boating season (77°F–86°F), 78–84% of the gasoline/oil mixture (50:1) for carbureted two-stroke engines would be evaporated from the water to the air in 1.2 hours. This EPA review also cites a study by the Boating Industrial Association (1974) that describes the two-stroke gas/oil mixture as having an 11-day half-life in still water (such as a laboratory tank) and a half-life of less than one day in open, aerated water (such as a lake). A description of the volatile nature of five gasoline constituents has been provided in the ''Water Quality'' section of the ''Affected Environment'' chapter.

51. One commenter requested that the Final Environmental Impact Statement include updated information on the July 2002 EPA proposed cleaner evaporative standards for PWC.

NPS Response: The text in the ''Air Quality Methodology and Assumption'' section of the ''Environmental Consequences''chapter has been changed to include the proposed EPA evaporative standards.

52. One commenter argued that the National Park Service based its findings on recent studies suggesting that changing from two-stroke carbureted to two stroke direct injection PWC engines might increase PAH emissions. A study by Norman Y. Kado et al, *Airborne Particle Emissions from two- and four-stroke Outboard Marine Engines: Polycyclic Aromatic Hydrocarbon and Bioassay Analysis*, (hereinafter referred to as ''Kado Study'') quantified PAH concentrations in airborne particulate emissions. The Kado Study showed that the PAH emissions from the direct-injection two-stroke engines tested were greater than from carbureted two-stroke engines. The direct-injection two-stroke outboard engine used in that study was a 1999 model and represented very early technology, and the results of the study are not applicable to newer model direct-injection outboard engines, much less PWC engines.

NPS Response: The NPS disagrees with the commenters conclusions. In addition, because many older engines would still be allowed to operate at Lake Powell through 2012, the National Park Service assumes that there would be increased PAH emissions and the Kado Study is relevant. Also, a recent study dated 2003 by the Tahoe Regional Planning Agency (hereinafter referred to as ''TRPA Study'') compared the concentrations of PAH compounds released into the water and found that the two-stroke carbureted outboard engine emitted lower PAH levels into the water than did the two-stroke direct-injected engine. The four-stroke carbureted outboard engine emitted the lowest PAH levels, as well as other gasoline-related contaminants into the water (TRPA Study dated 2003; CARB). So, while conversion of some carbureted two-stroke engines to direct-injection two-stroke engines would result in increased PAH emissions, the concurrent conversion to four-stroke

engines would result in reduced PAH emissions. However, the two-stroke carbureted outboard engine emitted higher levels of benzene than the two-stroke direct-injected engine model (CARB). PWC engines follow the same patterns of emission rates as outboard engines (CARB). The TRPA Study confirms other findings regarding emissions into the water and does not substantially change National Park Service conclusions regarding water quality impacts.

According to the Kado Study the higher levels of PAHs from two-stroke direct-injection engines may be due to differences in the characteristics of combustion such as temperature, spray location or spray pattern of the fuel and oil, timing of fuel delivery, and high levels of unburned fuel and oil in the two-stroke direct inject engines.

As shown by the commenter, using Kado data, the combined PAH emissions of one direct-injection two-stroke engine and one four-stroke engine would be slightly less than the PAH emissions of the two carbureted two-stroke engines that would be replaced. Therefore, the increase or decrease of PAH emissions as carbureted two-stroke engines are converted to cleaner engine types would depend on the relative numbers of the types of cleaner engines. In addition, in speaking with local PWC businesses, the majority of newer PWC models being sold are four-stroke engines, not two-stroke direct-injection engines, but no specific data is available. The speculation of the mix of engine types would not appreciably change National Park Service conclusions concerning PAH emissions made in the Final Environmental Impact Statement.

Comments Related to Cultural Resources

53. One commenter stated that the National Park Service identifies a potential concern that the ability of PWC operators to access remote areas of Glen Canyon National Recreation Area unit could intrude on traditional tribal activities and make certain cultural sites vulnerable to trampling, looting, and vandalism. The analysis does not document any instances where these problems have occurred. Nor is there any reason to believe that PWC users are more likely to pose these concerns than canoeists, kayakers, hikers, or others who might access these same areas. Even so, alternative B proposes to prohibit PWC use in several areas to protect against potential adverse impacts on these resources.

NPS Response: Navajo practitioners conduct traditional activities as individuals, and generally do not share this information with others. Almost universally, American Indians are extremely reticent to share sensitive information about personal religious activities with the public. Out of respect for these traditional beliefs, and in keeping with various laws and mandates, the National Park Service does not include descriptions of specific traditional activities or their locations in a public document. For these reasons, Glen Canyon National Recreation Area does not have documentation of specific instances where PWC users have intruded on traditional activities by tribal practitioners. However, the National Park Service is aware of the potential for conflicts with visitor use along the shorelines, particularly in more isolated areas. The effects on cultural resources, including sacred sites within the recreation area used by Native Americans, as a result of nonmotorized use as well as other uses of the lake will be assessed under the lake management plan. Even though the lake management plan is an element of alternative B, a separate NEPA assessment will be prepared to evaluate its effects.

54. One commenter stated that there is no legitimate reason for National Park Service to impose restrictions on PWC users only to protect cultural resources and activities from intrusion.

NPS Response: The plan was not designed to determine if PWC caused more damage to park resources than other boats or users, but rather, to determine if PWC use was consistent with Glen Canyon National Recreation Area's enabling legislation and management goals and objectives. An analysis was done on the management of PWC and with completion of the Final Environmental Impact Statement, the National Park Service is taking action to adopt special regulations to manage PWC use at Glen Canyon.

Comments Related to Visitor Use and Experience

55. One commenter requested that the Final Environmental Impact Statement include a map that identifies the Natural Zone and the Recreation and Resource Utilization Zone in the analysis area, and include additional detail regarding the purposes and objectives for these two zones. The impact of each alternative on whether the Natural Zone qualifies for wilderness designation, as recommended in the last Management Plan, should be described in the document.

NPS Response: A map of Glen Canyon National Recreation Area's management zones has been added to the ''Affected Environment'' chapter of Final Environmental Impact Statement, along with an additional description of the zones' objectives. All of the Federal lands in the natural zone were proposed as wilderness in the General Management Plan in 1972.

56. Some commenters cited user conflicts. Specific incidents included conflicts between PWC users and kayakers, fishermen, and hikers. A few PWC supporters said these conflicts resulted from a minority of inconsiderate PWC operators and that we should regulate inappropriate behavior or enforce existing regulations rather than prohibit PWC use.

NPS Response: The modified preferred alternative B will restrict PWC use on portions of the Escalante, Colorado, Dirty Devil, and San Juan Rivers and implement a flat-wake zone for PWC on a portion of the Escalante River. Based on the best available information, the National Park Service will implement these restrictions on the rivers to reduce visitor conflicts with river rafters, fishermen, and backcountry hikers; promote visitor enjoyment; and ensure visitor safety.

The modified preferred alternative B also provides for a three-year pilot study to further evaluate PWC use areas. Potential restrictions of PWC use in other locations of the recreation area will be evaluated at that time. The purpose of the pilot study and a description of how it will be implemented are provided in appendix C in the Draft and Final Environmental Impact Statements.

57. One commenter stated that the overall conclusions in the Draft Environmental Impact Statement and in the proposed rule regarding visitor perceptions of PWC were inconsistent with the data presented in the University of Minnesota study used in the analysis.

NPS Response: Conclusions of the Minnesota study (James 2000) were based on their professional analysis and statistical limitation of the data they collected. During the summer of 2000, the University of Minnesota conducted three on-site visitor surveys at Glen Canyon National Recreation Area. This survey was followed by a mail-back questionnaire sent to visitors after their trip to the recreation area. The study focused on visitors using the resources, as well as looking specifically at the population of visitors who used and also those who did not use PWC during their visit to the area. The analysis of impacts on visitor use and experience presented in the Draft and Final Environmental Impact Statements was based on the Minnesota study visitor's

perceptions of problems or conflicts with PWC.

Comments Related to Wildlife and Wildlife Habitat

58. One commenter stated that PWC use and human activities associated with their use may not be any more disturbing to wildlife species than any other type of motorized or non-motorized watercraft. The commenter cites research by Dr. Rodgers whose studies have shown that PWC are no more likely to disturb wildlife than any other form of human interaction. PWC posed less of a disturbance than other vessel types. Dr. Rodgers' research clearly shows that there is no reason to differentiate PWC from motorized boating based on claims on wildlife disturbance.

NPS Response: The wildlife impact analysis completed for the Glen Canyon NRA considered a large body of technical information, including research findings of Dr. Rodgers, that addressed, observed and tested effects of PWC and other motorized watercraft use on various fish and wildlife species and to wildlife in general. Some of the available literature discussed effects to some wildlife species and not to other groups. Some of the available literature noted that PWC use was less or no more disruptive than other types of motorized or man-powered watercraft. A common theme in many of the research findings was that much of the wildlife effect depended on a complex of other environmental variables not just the type of watercraft. The NPS considered all these findings in conducting an objective and balanced impact analysis. The literature results were used as appropriate within the physical and ecological conditions that prevail at Glen Canyon. It was concluded in the final EIS that alternatives A and B would have negligible to minor adverse affects on wildlife and wildlife habitat from noise, high-speed operations, habitat disturbance and exposure to fuel constituents. Continued PWC operation under these alternatives would not result in an impairment of wildlife, fish, or supporting habitat resources. These conclusions regarding wildlife impacts that were based on scientific literature and based on the environmental conditions present in Glen Canyon NRA are believed to be accurate and complete.

Comments Related to Shoreline and Submerged Aquatic Vegetation

59. One commenter noted that the EIS identified the issue of potential concern that the beaching and landing of PWC could result in the trampling of shoreline vegetation. The comment refers to several other phrases in the text that discuss the affected environment and the indistinguishable cumulative effects of PWC use and other watercraft on shoreline or submerged aquatic vegetation.

NPS Response: Shoreline vegetation has been historically subjected to many sources of disturbance since the recreation area was created. The most important has been repeated inundation and desiccation as the reservoir level rises and falls. Other sources that have affected and would continue to affect shoreline vegetation include PWC operators, other watercraft operators and passengers, general visitors and livestock in some areas. The NPS believes that the incremental effect from PWC users on shoreline vegetation conditions would be indistinguishable from other visitor-induced effects. Foot traffic from all visitor activities would occur on shorelines and lake beaches in accessible shoreline areas. Past, current and future PWC use would not produce any noticeable effect on submerged aquatic, riparian and wetland vegetation. Therefore, cumulative effects would be negligible.

Comments Related to Natural Soundscape

60. Several commenters noted that PWC were being singled out for restrictions without regard to other sources of noise, including ''muscle'' boats, other motorboats, loud music, parties, and illegal fireworks.

NPS Response: The Final Environmental Impact Statement and final rule were not designed to determine if PWC caused more environmental damage to park resources than other boats, but rather, to determine if PWC use was consistent with Glen Canyon National Recreation Area's enabling legislation and management goals and objectives of the park. Depending upon the results of the Final Environmental Impact Statement, the National Park Service could, as it has in this rulemaking, take action to adopt special regulations to manage PWC use at Glen Canyon, or could have chosen to discontinue PWC use. The alternatives listed were based upon the best information available. Other resource impacts and issues will be addressed through other planning documents and regulations.

61. Several commenters expressed a concern that the analysis did not address the fluctuations of sound that PWC make compared to other motorized watercraft. Specifically, the distinctive pitch variation may have different effects on humans and other species and is more annoying or irritating than the more constant sounds associated with other boats.

NPS Response: The pitch variations associated with PWC and the noise differences between PWC and motorboats are acknowledged under the ''Soundscapes'' section in the ''Affected Environment'' chapter of the Draft and Final Environmental Impact Statements. PWC noise does fluctuate as a result of typical operation, but the noise intensity levels are not typically in violation of the National Park Service noise standard. The suggestion that pitch variations may have different effects on humans and other species, and that the variation is more annoying or irritating, was incorporated in the analysis and contributes to the ''minor to moderate'' adverse impact determination.

62. One commenter stated that wilderness management in the Natural Zone is ignored even though it is stated as a goal in Glen Canyon National Recreation Area's general management plan. They further state that only alternative C which bans PWC correlates satisfactorily with the values of wilderness management.

NPS Response: The noise impacts on the Natural Zone were determined to be adverse and ranged from minor to moderate within a mile of the shoreline (refer to the noise analysis in the ''Soundscapes'' section of the ''Environmental Consequences'' chapter).

The Final Environmental Impact Statement states that PWC sound impacts wilderness values of solitude and natural quiet because sound carries beyond the shoreline and is heard at some distance within the Natural Zone. The sound is heard up to a maximum of 2 miles from the source over a flat surface, but the topography surrounding Lake Powell is not flat. Assuming that a natural barrier to the sound would exist where there is an elevation change of 50 feet (approximate height of a five-story building), approximately 16,000 acres would be affected (between 3,700 feet to 3,750 feet in elevation). This equals 2.3% of the Natural Zone (668,670 acres). Time of day and season of use would also reduce the level of noise in the Natural Zone because the noise would not be continuous, would be encountered only during daylight hours, and would be minimal between October and May.

Although noise does intrude on desired wilderness and Natural Zone soundscape values, the inescapable juxtaposition of the Natural Zone and the Recreation and Resource Utilization Zone make it impossible to avoid all adverse impacts on the Natural Zone/

wilderness soundscape. As shown above, only 2.3% of the Natural Zone's area would be affected, and those soundscape effects would be offset even further by diurnal/nocturnal and seasonal reductions in watercraft noise.

There is a potential conflict in the management objectives between the Recreation and Resource Utilization Zone and the Natural Zone that is extremely difficult to avoid because the zones are adjacent to each other. However, the percentage of the Natural Zone that is adversely affected by PWC noise, as shown in the preceding paragraph, is small. The noise generated by watercraft in the Recreation and Resource Utilization Zone, including PWC, is consistent with Glen Canyon National Recreation Area's enabling legislation ''to provide for public outdoor recreation use and enjoyment of Lake Powell and the lands adjacent thereto.''

The modified preferred alternative B provides for a three-year pilot study to further evaluate PWC use areas. Potential restrictions of PWC use in other locations of the recreation area will be evaluated during the pilot study. The purpose of the pilot study and a description of how it will be implemented are provided in appendix C of the Final EIS. In addition, the preparation of a lake management plan, which was included in all alternatives in the Final Environmental Impact Statement, will provide an opportunity for the National Park Service to further evaluate impacts of all lake users on all resources, including the soundscape.

63. One commenter asked why if noise generated by watercraft is consistent with the park purposes is soundscape being addressed as a reason to manage PWC.

NPS Response: The ''Purpose of and Need for Action'' chapter in the Draft and Final Environmental Impact Statements states that the overall objective for EIS and rulemaking is to evaluate a range of alternatives and strategies to determine the appropriateness of PWC use at Glen Canyon NRA with the goal of ensuring protection of recreational and resource values. This objective was derived from the enabling legislation for Glen Canyon National Recreation Area. Soundscape was one of the issues that was evaluated in order to determine appropriateness of PWC use. As a result of the evaluation, the NPS determined that no additional measures are required, beyond exist NPS noise regulations, to manage noise from PWC.

64. One commenter stated that since 1998, the PWC companies have reduced engine sound levels by up to 70% and have introduced design changes to not only reduce engine sound intensity, but to reduce the sound pitch that some claim to be annoying.

NPS Response: The National Park Service appreciates the information regarding new noise suppression designs being used by some PWC manufacturers. The Final Environmental Impact Statement refers to the potential noise abatement factors and acknowledges that future designs may mitigate sound impacts (see the ''Affected Environment'' chapter).

65. One commenter stated that the ''promise'' of quieter PWC by the PWC companies is no reason to approve PWC use at the recreation area.

NPS Response: The National Park Service has recognized that some PWC manufacturers are developing new noise suppression designs for new PWC. The industry's conversion to the four-stroke technology and the use of resonators is reducing the noise. Manufacturers are using noise absorbing foam and rubber padding in the construction of PWC. Consequently, the newer technology used in PWC construction is addressing noise concerns. The Final Environmental Impact Statement refers to the potential noise abatement factors and acknowledges that future designs may mitigate sound impacts (see the ''Affected Environment'' chapter).

The Final Environmental Impact Statement and final rule were designed to determine if PWC use was consistent with Glen Canyon National Recreation Area's enabling legislation and management goals and objectives. With completion of the Final Environmental Impact Statement, the National Park Service could, as it has in this rulemaking, take action to adopt special regulations to manage PWC use at Glen Canyon, or could have chosen to discontinue PWC use.

Drafting Information

The primary authors of this regulation were Suzy Schulman, Environmental Specialist, Glen Canyon NRA; Brian Wright, Outdoor Recreation Planner, Glen Canyon NRA; Sarah Bransom, Environmental Quality Division, National Park Service; Kym Hall, Regulations Program Manager, National Park Service, and Michael Tiernan, DOI Solicitor's Office.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities. This determination is based upon the findings in a report prepared by the National Park Service entitled ''Economic Analysis of PWC Regulations in Glen Canyon National Recreation Area'' (Law Engineering and Environmental Services, Inc., 2002). The focus of this study was to document the impact of this rule on a variety of small entities including PWC dealerships and repair shops, PWC rental business, and other local businesses that provide services to PWC users. The Economic Analysis may be viewed on the Glen Canyon Web site at *http://www.nps.gov/glca*.

This rule will continue PWC use with restrictions in some narrow canyon areas and other management restrictions. Some localized ecosystem protection and noise reduction benefits are anticipated. However, because the vast majority of Lake Powell, including the most popular areas for PWC use, will remain open to PWC use under this rule, the NPS anticipates no significant effects on the visiting public or local businesses.

If this rule was not instituted, PWC use would be completely banned under the no-action alternative, affecting the approximately 40 percent of visitors that use PWC. Maintaining PWC use in GLCA under this rule will result in an estimated increase in producer surplus (a measure closely related to business profit) in the local community of between $1,232,800 and $12,304,300 annually relative to baseline conditions (where PWC would be banned). The economic effect on the members of the visiting public that do not use PWC was not quantified due to limited data availability; however, the 40 percent of visitors that currently use PWC will regain all the consumer surplus value they receive from PWC use in GLCA. Consumer surplus gains to PWC users of continued access to GLCA are estimated to be between $9,806,600 and $20,166,400 annually. Beneficiaries of the no-action alternative would include the remaining portion of visitors that do not use PWC. Additionally, ''nonusers'' may significantly benefit from knowing that resources in the National Recreation Area will be better protected into the future.

Over a ten-year horizon, the present value of the gains is estimated to be $86.9 million to $155.3 million in consumer surplus and $10.9 million to

$94.7 million in producer surplus using a 3 percent discount rate. This suggests the total gain in consumer and producer surplus from this rule relative to the baseline is $97.8 million to $250.0 million using a 3 percent discount rate. Losses to non-PWC users have not been quantified due to insufficient data. A 3 percent discount rate is widely recognized in the economics literature and Federal rulemakings as an appropriate discount rate for valuing natural amenities and other non-market resources and services. When discounted at 7 percent per year (OMB Circular A–94), the present value of the gain in consumer surplus is estimated to be $68.5 million to $122.5 million and the present value of the gain in producer surplus is estimated to be $8.6 million to $74.7 million. In this case, the total gain in consumer and producer surplus relative to baseline conditions is $77.1 million to $197.2 million, not including unquantified losses to non-PWC users.

This analysis clearly indicates that this rule is expected to avoid significant losses to local business. However, the net effect of this rule on the visiting public and nonusers has not been quantitatively determined.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel legal or policy issues. This rule is among the first of its kind for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) based on a report entitled *Economic Analysis of PWC Regulations in Glen Canyon National Recreation Area* (Law Engineering and Environmental Services, Inc. 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that there was no potential loss for these types of businesses as a result of this rule since PWC use would remain substantially the same as it has been over the last several years.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Impact Statement (EIS). The draft EIS was made available for public review and comment on September 13, 2002, (67 FR 58071), and the Final Environmental Impact Statement (FEIS) was made available to the public on May 16, 2003 (68 FR 26645). A copy of the FEIS is available on the Glen Canyon National Recreation Area Web page at *http://www.nps.gov/glca/plan.htm,* at regional libraries, or a copy may be obtained by contacting the Superintendent, Glen Canyon National Recreation Area.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, the National Park Service has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

During May 2002, the NPS consulted with tribes in the surrounding area in writing and/or in person about the development of this rule and the supporting Environmental Impact Statement. Those tribes include the Hopi, Navajo, San Juan Southern Paiute, and Kaibab Paiute Tribes as well as several tribal historic preservation programs and cultural and natural resources divisions of the tribes. None of the tribes have expressed concern or dissent with the planning process or development of the alternatives for the EIS or this rule.

Administrative Procedure Act

This final rule is effective upon publication in the **Federal Register**. In accordance with the Administrative

Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.70(g), is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in this preamble, the final rule is a part 7 special regulation for Glen Canyon National Recreation Area that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of PWC in units of the national park system unless an individual park area has designated the use of PWC by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (68 FR 2466) on January 17, 2003, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedure Act, pursuant to the exception in paragraph (d)(1), waives the section 553(d) 30-day waiting period when the published rule ''grants or recognizes an exemption or relieves a restriction.'' In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period before the effective date does not apply to the Glen Canyon National Recreation Area final rule.

The Attorney General's Manual on the Administrative Procedure Act explained that the ''reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one ''granting or recognizing exemption or relieving restriction,'' thereby exempting it from the thirty-day requirement.'' This rule is within the scope of the exception as described by the Attorney General's Manual and the 30-day waiting period should be waived. *See also, Independent U.S. Tanker Owners Committee* v. *Skinner,* 884 F.2d 587 (DC Cir. 1989). In this case, the court found that paragraph (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. ''In sum, the good cause exception must be invoked and justified; the paragraph (d)(1) exception applies automatically'' (884 F.2d at 591). The facts are that Glen Canyon National Recreation Area is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the paragraph (d)(1) exception applies to this rule.

In accordance with the Administrative Procedure Act, this rule is also excepted from the 30-day waiting period by the ''good cause'' exception in 5 U.S.C. 553(d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. ''The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was ''to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.'' S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946).'' *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

The rule has been developed in full compliance with section 553(b) and (c) rulemaking requirements. The proposed rule was published in the **Federal Register** and provided 60 days for public comments. The public comments received are summarized and analyzed in this document. Also as part of this process, the park prepared a Draft Environmental Impact Statement (DEIS) that was made available to the public on September 13, 2002, for comment. The DEIS evaluated the various alternatives for managing PWC use at Glen Canyon, including an alternative with no PWC use. After reviewing the comments to the DEIS the NPS modified the proposed alternatives and responded to comments in a Final Environmental Impact Statement that was made available to the public on May 16, 2003. This rule will now implement the preferred alternative B with certain modifications as a result of the public comments received in response to the proposed rule and the DEIS.

''In determining whether to invoke the exception, the agency is 'required to balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of its ruling.''' *The Northern Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 752 (10th Cir. 1987). The primary purpose of the 30-day waiting period is to provide the public with time to prepare for the changes caused by the new rule. This rule authorizes the continued use of PWCs at Glen Canyon National Recreation Area. Because of the two-year grace period established by the March 2000 Final Rule and the temporary lifting of the PWC ban for the summer of 2003, PWC use has been allowed to continue at Glen Canyon despite the prohibition in 36 CFR 3.24. Providing a 30-day waiting period would not benefit the parties affected by this rule, instead there is good cause for making this rule effective upon publication so that affected parties can continue using PWCs.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Section 7.70 is amended by adding paragraph (g) to read as follows:

§ 7.70 Glen Canyon National Recreation Area.

* * * * *

(g) *PWC.* (1) A person may launch and operate a PWC in park waters or beach a PWC on park lands, except in the following areas:

(i) On the Colorado River between Glen Canyon Dam and the downstream river boundary of Glen Canyon National Recreation Area where it adjoins Grand Canyon National Park.

(ii) On the Colorado River upstream of Sheep Canyon.

(iii) On the San Juan River upstream of Clay Hills pullout.

(iv) On the Escalante River upstream of Coyote Creek.

(v) On the Dirty Devil River upstream of Utah Highway 95 bridge.

(2) A person may not operate a PWC at speed in excess of flat wake speed on the Escalante River from Cow Canyon to Coyote Creek.

(3) After December 31, 2012, no one may operate a PWC that does not meet the 2006 emission standards set by EPA for the manufacturing of two-stroke engines. A person operating a PWC that meets the EPA 2006 emission standards through the use of direct injection two-stroke or four-stroke engines, or the

equivalent thereof, is not subject to this prohibition and will be allowed to operate as described in this section.

(4) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: September 9, 2003.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 03–24363 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL62

Compensation and Pension Provisions of the Veterans Benefits Act of 2002

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect the statutory provisions of the Veterans Benefits Act of 2002. These changes address entitlement to special monthly compensation for loss of breast tissue in a woman and increased pension payable to Medal of Honor recipients.

DATES: *Effective Dates:* In accordance with statutory provisions, the effective dates for the amendments in this final rule are as follows:

The amendments to 38 CFR 3.350 and 38 CFR 3.802 are effective December 6, 2002.

The amendments to 38 CFR 3.27 are effective September 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Konieczny, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (202) 273–6779.

SUPPLEMENTARY INFORMATION: On December 6, 2002, the Veterans Benefits Act of 2002, Pub. L. 107–330 (the Act), was enacted. Certain provisions of the Act directly affect the payment of VA compensation or pension benefits. These provisions concern special monthly compensation for loss of breast tissue in a woman and the amount of pension payable to Medal of Honor recipients.

Section 102 of the Act amended 38 U.S.C. 1114(k) to authorize special monthly compensation to women veterans for loss of 25% or more of tissue from a single breast or both breasts in combination, including loss by mastectomy or partial mastectomy, or following receipt of radiation treatment of breast tissue. In this document we are amending 38 CFR 3.350(a) to reflect that change. We are deleting 38 CFR 3.350(a)(7) because the change to 38 CFR 3.350(a) makes it no longer necessary to define the term ''anatomical loss of one or both breasts.''

Section 304 of the Act amended 38 U.S.C. 1562 to provide for an annual increase in the Medal of Honor pension effective December 1 of each year, beginning December 1, 2004, by a percentage equal to the cost of living adjustment of benefits paid under Title II of the Social Security Act. This document amends 38 CFR 3.27 to reflect that change. Section 304 also provides for a retroactive lump sum payment of the Medal of Honor pension from the first day of the month after the date of the event for which the veteran earned the Medal of Honor for current as well as future recipients of the special pension. This document amends 38 CFR 3.802 to reflect that change. In accordance with the Act, no retroactive lump sum payment can be made prior to October 1, 2003.

When Congress does not specify an effective date for a statutory provision, the effective date is the date of enactment. In section 102 of the Act, because Congress did not specify an effective date for the amendment to 38 U.S.C. 1114(k), that amendment was effective December 6, 2002, the date of enactment of the Act. Similarly, in section 304 of the Act, Congress did not specify an effective date for the amendment to 38 U.S.C. 1562 authorizing a retroactive lump sum payment for the Medal of Honor pension, and the amendment was effective December 6, 2002. For certain provisions of the Act, however, Congress specifically provided effective dates that are different from the date of enactment of the Act. In paragraph (d)(1) of section 304 of the Act, Congress specified that the amendment to 38 U.S.C. 1562 authorizing an annual increase in the Medal of Honor pension would be effective September 1, 2003.

For certain provisions in the Act, the effective date of the provision governs the date on which benefit eligibility can arise. For instance, section 102 of the Act authorizes, as of December 6, 2002, special monthly compensation for women veterans who suffered the ''loss of 25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue.'' For certain other provisions, Congress provided that, although the amendment was effective immediately, benefit eligibility would not arise until a later date. In paragraph (d)(2) of section 304 of the Act, Congress specified that VA would not make any annual adjustment to the monthly Medal of Honor pension in 2003. Therefore, the first annual adjustment would be made on December 1, 2004. Also, in paragraph (d)(1) of section 304, Congress specifically noted that no retroactive lump sum payment of the Medal of Honor pension would be made prior to October 1, 2003. These effective dates and rules governing eligibility are reflected in the effective-date and substantive provisions of this notice.

Administrative Procedure Act

Changes made by this final rule merely reflect new statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule does not affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(B), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program number for this rule is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedures, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 9, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR Part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.27 is amended by:

■ a. Redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d).

■ b. In newly designated paragraph (e), removing ''and the monthly'' and adding in its place ''the monthly''; and removing ''chapter 18'' and adding in its place ''chapter 18 and the Medal of Honor pension'' .

■ The added text reads as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(d) *Medal of Honor pension.* Beginning in the year 2004, VA shall, effective December 1 of each year, increase the monthly Medal of Honor pension by the same percentage as the percentage by which benefit amounts payable under section 215(i) of Title II of the Social Security Act are increased effective December 1 of such year.

(Authority: 38 U.S.C. 1562(e))

* * * * *

§ 3.350 [Amended]

■ 3. Section 3.350 is amended by:

■ a. In paragraph (a) introductory text, removing ''the anatomical loss of one or both breasts (including loss by mastectomy).'' and adding, in its place, ''loss of 25% or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy), or following receipt of radiation treatment of breast tissue.''

■ b. Removing paragraph (a)(7) and the authority citation at the end of the section.

■ 4. Section 3.802 is amended by adding paragraph (c) immediately following the authority citation at the end of the section:

§ 3.802 Medal of Honor.

* * * * *

(c) VA will pay to each person who is receiving or who in the future receives Medal of Honor pension a retroactive lump sum payment equal to the total amount of Medal of Honor pension that person would have received during the period beginning the first day of the month after the date of the event for which the veteran earned the Medal of Honor and ending on the last day of the month preceding the month in which pension was awarded under paragraph (b) of this section. VA will calculate the lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran earned the Medal of Honor, to the last day of the month preceding the month in which the individual was initially awarded the Medal of Honor pension. VA will not make a retroactive lump sum payment under this section before October 1, 2003.

(Authority: 38 U.S.C. 1562(f))

[FR Doc. 03–24304 Filed 9–25–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 61

RIN 2900–AL30

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms without any changes except for adding OMB information collection citations in part 61, to the provisions of an interim final rule that revised the regulations concerning the VA Homeless Providers Grant and Per Diem Program.

In large part the interim final rule implemented the provisions of the Homeless Veterans Comprehensive Assistance Act of 2001.

The interim final rule also established provisions in the form of funding priorities to meet a statutory mandate. In addition, to help ensure that program objectives are met by those receiving assistance, the interim final rule added provisions to state that to receive assistance, an entity must not be in default by failing to meet requirements under any previously awarded grant.

Further, the interim final rule made changes to provide that each resident of supportive housing may be required to pay rent in an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income not including amounts equal to medical expenses, child care expenses, or court-ordered payments. This was intended to provide a system that is administratively feasible, that allows for significant help for covering operating expenses, and that would allow veterans to retain sufficient funds to help prepare for a successful transition to independent living.

DATES: *Effective Date:* This final rule is effective on October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Guy A. Liedke, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on March 19, 2003 at 68 FR 13590, we promulgated an interim final rule that revised the regulations concerning the VA Homeless Providers Grant and Per Diem Program as explained in the **SUMMARY** portion of this document.

We provided a 60-day comment period that ended May 19, 2003. We did not receive any comments. Based on the rationale set forth in the interim final rule, we are adopting the provisions of the interim final rule as a final rule without any changes, except for the addition of OMB's information collection requirements approval number for the affected sections.

This final rule is issued under authority of 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, and 7721 note.

Paperwork Reduction Act

This final rule contains new collections of information under the Paperwork Reduction at §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.80. We described the new information collections in the preamble of the interim final rule and provided comment periods on both emergency and non-emergency bases. We did not receive any comments concerning the new information collections. The Office of Management and Budget has assigned control number 2900–0554 to the new

information collections. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays this currently valid OMB control number.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602. In all likelihood, only similar entities that are small entities will participate in the Homeless Providers Grant and Per Diem Program. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program; Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: August 11, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ Accordingly, the interim final rule amending 38 CFR parts 17 and 61 that was published in the **Federal Register** at 68 FR 13590 on March 19, 2003, is adopted as a final rule with the following changes.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note.*

■ 2. In § 61.11, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.11 Applications for capital grants.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 3. In § 61.15, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.15 Obtaining additional information and awarding capital grants.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 4. In § 61.17, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.17 Site control for capital grants.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 5. In § 61.20, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.20 Life Safety Code capital grants.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 6. In § 61.31, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.31 Application for per diem.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 7. In § 61.41, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.41 Special needs grants application.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 8. In § 61.51, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.51 Applications for technical assistance grants.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 9. In § 61.55, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.55 Technical assistance reports.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

■ 10. In § 61.80, add a parenthetical immediately preceding the authority citation at the end of the section to read as follows:

§ 61.80 General operation requirements for supportive housing and service centers.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554.)

[FR Doc. 03–24212 Filed 9–25–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA138–4098a; FRL–7562–6]

Approval and Promulgation of Air Quality Implementation Plans; Removal of Direct Final Rule; Federally Enforceable State Operating Permit Program; Allegheny County, PA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of final rule.

SUMMARY: Because EPA received adverse comments, we are removing our approval of the revision to the Allegheny County portion of the Commonwealth of Pennsylvania State Implementation Plan which consists of Allegheny County's state operating permit program. EPA is removing the language of the rule which was to approve the revision in accordance with the requirements of sections 110 and 112 of the Clean Air Act. The original action was published in the **Federal Register** on June 26, 2003 as a direct final rule. We will address the comments received in a future final action based on the proposed rule which was also published on June 26, 2003.

DATES: This rule is effective on November 25, 2003.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, Permits and Technical Assessment Branch at (215) 814–2183 or by e-mail at *wentworth.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: Please see the information provided in the direct final action published in the **Federal Register** on June 26, 2003 (68 FR 37973) and in the companion proposed rule which was also published on June 26, 2003 (68 FR 37993).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

■ 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.*

■ 2. Section 52.2020 is amended by removing paragraph (c)(209).

Dated: September 10, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–24119 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[GA–57–200341; FRL–7563–4]

Determination of Nonattainment as of November 15, 1999, and Reclassification of the Atlanta 1-Hour Ozone Nonattainment Area; State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to issue a determination that the Metropolitan Atlanta 1-hour serious ozone nonattainment area (hereinafter referred to as the Atlanta area) did not attain the 1-hour ozone national ambient air quality standard (NAAQS) by the November 15, 1999, Clean Air Act (CAA) deadline for serious ozone nonattainment areas. As a result, the Atlanta area is reclassified by operation of law as a severe ozone nonattainment area on the effective date of this rule. The Georgia Environmental Protection Division (GAEPD) must submit by July 1, 2004, a State Implementation Plan (SIP) revision for the Atlanta area that meets the severe area 1-hour ozone nonattainment area requirements of CAA section 182(d). The due date for the section 185 enforcement rule is July 1, 2005, due to the need for the State to acquire the necessary statutory authority to implement this rule. Finally, EPA is adjusting the dates by which the area must achieve a Rate of Progress plan (ROP) to cover an average of 3 percent per year reduction in ozone precursor emissions from 1999 to the attainment year and adjusting contingency measure requirements as this relates to the ROP milestone. In an Order entered on June 16, 2003, the United States Court of Appeals for the Eleventh Circuit granted EPA's motion for voluntary vacatur of the EPA's extension of the 1-hour ozone attainment date for the Atlanta area and EPA's approval of the 1-hour ozone attainment demonstration SIP submitted by the GAEPD on July 17, 2001, and remanded the matter to the agency for further proceedings consistent with the court's order. This final determination and this notice are in direct response to and comply with the court's order.

DATES: This final rule is effective January 1, 2004.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following addresses: U.S. EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, EPA Region 4, (404) 562–9036 or email: *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA.

Table of Contents

I. Background
II. Atlanta 1-Hour Ozone Nonattainment Area
III. Explanation of a SIP
IV. The NAAQS For Ozone
V. Application of the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications
VI. Necessity of This Action
VII. Results of This Action
VIII. Reclassification
IX. Effective Date of Reclassification
X. Severe Area Attainment Date
XI. Severe Area Requirements SIP Submittal
XII. Rate-of-Progress (ROP) Schedule
XIII. Use of MOBILE6 in SIP Submittals
XIV. Impacts on the Title V Program
XV. Vacatur of Previous Approval
XVI. Comment and Response
XVII. Final Action
XVIII. Statutory and Executive Order Reviews

I. Background

In a **Federal Register** notice published on December 11, 2001, (66 FR 63972) EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta 1-hour ozone nonattainment area which was submitted by the GAEPD on July 17, 2001, and extend the attainment date to November 15, 2004. Additionally, in the alternative, EPA proposed to find that the Atlanta area had failed to attain the 1-hour ozone NAAQS by November 15, 1999, the date set forth in the CAA for serious nonattainment areas. Subsequently, in a **Federal Register** notice published on May 7, 2002, (67 FR 30574) EPA granted final approval to the 1-hour ozone attainment demonstration for the Atlanta area as submitted on July 17, 2001, the Reasonably Available Control Measures (RACM) analysis, commitment to perform an early attainment assessment, contingency measures, the 2004 motor vehicle emissions budget (MVEB), and the Partnership for a Smog Free Georgia (PSG) program, and EPA extended the area's attainment date to November 15, 2004. At that time, EPA did not finalize the finding of failure to attain and the

Atlanta area remained classified as a serious nonattainment area.

EPA cited its July 16, 1998, guidance memorandum entitled ''Extension of Attainment Dates for Downwind Areas'' which was published in a notice of interpretation on March 25, 1999, (64 FR 14441) as justification for the extension of the attainment date without reclassification. On July 2, 2002, the D.C. Circuit Court, *Sierra Club* v. *EPA,* 294 F.3d 155, determined that the CAA precluded the attainment date extension policy as a matter of law. The Seventh Circuit, *Sierra Club* v. *EPA,*, 311 F.3d 853 (7th Cir. Nov. 25, 2002), and the Fifth Circuit, *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. Dec. 11, 2002) subsequently issued opinions that reached the same conclusion with respect to extensions granted to St. Louis, MO and Beaumont, TX [1]. In light of the decisions of these circuits, on February 20, 2003, the EPA filed a motion for voluntary vacatur of its extension of the attainment date deadline for the Atlanta 1-hour ozone nonattainment area and its approval of the Atlanta area 1-hour ozone attainment demonstration SIP. The Eleventh Circuit Court of Appeals granted EPA's request on June 16, 2003, and the Court remanded the matter to EPA for further proceedings consistent with the court's order.

II. Atlanta 1-Hour Ozone Nonattainment Area

The Atlanta 1-hour ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale.

III. Explanation of a SIP

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

IV. The NAAQS For Ozone

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value	Type	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.

(Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.)

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to the Atlanta area, and it is the classification of the Atlanta area with respect to the 1-hour ozone standard that is addressed in this document.

V. Application of the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications

On December 11, 2001, EPA proposed its finding that the Atlanta area did not attain the 1-hour ozone standard by the applicable date (66 FR 63972). In that notice of proposed rulemaking we discussed how we believed the provisions of section 181(b)(2), the relevant sections of the CAA regarding determinations of attainment and reclassifications for failure to attain, would apply to the Atlanta area. The proposed finding was based upon ambient ozone concentration data for the period 1997 through 1999, from the monitoring sites in the Atlanta area, several of which recorded an average of more than one exceedance per year.

Section 181(b)(2)(A) of the CAA requires that when EPA determines that an area has not attained the standard by its statutorily required date the area shall be reclassified by operation of law to the higher of:

(1) The next higher classification for the area, or

(2) The classification applicable to the area's design value as determined at the time EPA publishes its notice that the area failed to attain.

Even if a serious area's design value at the time of reclassification is lower than the design value for serious areas that serious area cannot be reclassified to a lower classification because the minimum statutory classification resulting from a failure to attain is severe. No area can be reclassified to a category higher than severe. Extreme is the only classification higher than severe, but the statute does not permit reclassification to this level.

The air quality data upon which we made the proposed finding of failure to attain the ozone NAAQS were available for comment in our December 11, 2001, notice of proposed rulemaking. We received no adverse comments pertaining to that air quality data and the proposed determination of nonattainment.

TABLE 2.—AIR QUALITY MONITORING DATA FOR THE ATLANTA AREA 1997–1999

Site ID	County	Total exceedances 97–99	Annual average design expected exceedances	Design value (ppm)
13–089–0002	DeKalb	16	6.7	0.142
13–089–3001	DeKalb	10	4.4	0.135

[1] In the wake of these decisions, EPA issued final rulemakings reclassifying the Washington, DC ozone nonattainment area, 68 FR 3410 (January 24, 2003), and the St. Louis ozone nonattainment area, 68 FR 4835 (January 30, 2003). (EPA subsequently redesignated the St. Louis area to attainment for the ozone standard 68 FR 25418 and 68 FR 25442 (May 12, 2003).) In addition, in light of the Fifth Circuit's decision on Beaumont, EPA recently issued a final rule withdrawing a transport-based attainment date extension and reclassifying the Baton Rouge ozone nonattainment area (68 FR 20077 (April 24, 2003)) and has proposed to do the same for the Beaumont area (68 FR 36756 (June 19, 2003)).

TABLE 2.—AIR QUALITY MONITORING DATA FOR THE ATLANTA AREA 1997–1999—Continued

Site ID	County	Total exceedances 97–99	Annual average design expected exceedances	Design value (ppm)
13–097–0004	Douglas	9	3.5	0.131
13–121–0055	Fulton	28	10.8	0.156
13–135–0002	Gwinnett	7	2.9	0.138
13–223–0003	Paulding	3	1.1	0.124
13–247–0001	Rockdale	28	10.3	0.153

*Only monitors with three complete years of data were used for these calculations.

EPA has determined that the relevant air quality data for the period of 1997 through 1999, inclusive, for the Atlanta area shows that the Atlanta area contained at least one monitor with an average annual number of expected exceedances that was greater than the 1.0 allowed by the 1-hour ozone NAAQS. Therefore, we make the determination pursuant to section 181(b)(2)(B) of the CAA that the Atlanta area did not attain the 1-hour ozone standard by the November 15, 1999, attainment date, and that the area is reclassified by operation of law to severe nonattainment on the effective date of this rule.

VI. Necessity for This Action

On May 7, 2002, EPA granted final approval to the 1-hour ozone attainment demonstration for the Atlanta area and extended the attainment date to November 15, 2004. Subsequently, the Southern Organizing Committee for Economic and Social Justice, the Georgia Coalition for the People's Agenda and the Sierra Club petitioned for review of the agency's action to the 11th Circuit Court of Appeals. Due to a series of prior rulings in other circuits that EPA's attainment date extension policy was invalid as a matter of law, EPA filed a motion for voluntary vacatur with the 11th Circuit Court of Appeals on February 20, 2003. The 11th Circuit granted the request for voluntary vacatur on June 16, 2003, and remanded the matter to the agency for further proceedings consistent with the court's order.

VII. Results of This Action

In this action, EPA is issuing a final determination pursuant to section 181(b)(2) of the CAA, that the Atlanta area did not attain the 1-hour ozone NAAQS by November 15, 1999. In doing so, EPA is fulfilling our nondiscretionary duty pursuant to the CAA. As a result of this final determination, the Atlanta area is reclassified by operation of law to severe ozone nonattainment pursuant to section 181(b)(2) of the CAA. In addition, this action sets the dates by which the Atlanta area must submit a SIP revision addressing the CAA's pollution control requirements for severe ozone nonattainment areas (the ''severe area SIP'') and to attain the 1-hour NAAQS for ozone.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the requirements applicable to the reclassified area. An area reclassified to severe is required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS in section 182(d) and the penalty requirement in section 185.

In the December 11, 2001, (66 FR 63972) supplemental proposed rule EPA requested comment on the time frame for the State to submit the severe area SIP requirements. The proposal requested comment on two potential time frames of 12 months and 18 months. No comments were received by EPA on this issue. Due to the short time frames, GAEPD in a letter dated September 8, 2003, agreed to submit all SIPs, with one exception, by July 1, 2004, which is less than the proposed time frames. The one exception is the section 185 penalty rule. This SIP is due 18 months after the effective date of this action, July 1, 2005, because the State will need the full 18 months to acquire the necessary statutory authority to implement this rule.

VIII. Reclassification

Section 181(b)(2)(A) of the CAA requires that, when an area is reclassified for failure to attain, its reclassification be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. Section 181(b)(2)(A)(ii) provides that no area shall be reclassified as Extreme. The Atlanta area is a serious nonattainment area with a design value of 0.156 ppm based on monitoring data for the years 1997 to 1999. Therefore, the Atlanta area is reclassified, by operation of law, as a severe nonattainment area.

IX. Effective Date of Reclassification

EPA is setting the effective date of this action as January 1, 2004, because the GAEPD has calendar year contracts for sampling for the Georgia fuel rule, as well as, calendar year reporting requirements. The same suppliers and importers for the Georgia fuel rule will be impacted by the requirement, beginning one year after the effective date of the reclassification, to supply gasoline that complies with the federal reformulated gasoline standards. Therefore, this effective date will minimize complications regarding reporting and compliance with both the State and federal fuel requirements.

X. Severe Area Attainment Date

Under section 181(a)(1) of the CAA, the new severe area attainment deadline for the Atlanta area as reclassified pursuant to section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. The expeditiously as practicable attainment date will be determined as part of the approval of the severe area attainment demonstration.

XI. Severe Area Requirements SIP Submittal

Under section 181(a)(1) of the CAA, the attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. Under section 182(i), such areas are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major applicability cutoff; (3) a

new source review (NSR) offset requirement of at least 1.3 to 1; (4) a post-1999 rate-of-progress plan containing emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999, until the attainment date; and (5) additional transportation control measures (TCMs) needed to offset growth in emissions due to growth in vehicle miles traveled (VMT); and (6) a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by 2005. Additionally, section 211 ''Reformulated Gasoline and Oxygenated Gasoline'' of CAA requires any area reclassified from ''serious'' to ''severe'' to implement reformulated gasoline. We have issued a ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. *See* 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Further, Georgia is required to submit a revision to the SIP containing contingency measures under sections 172(c)(9) and 182(c)(9) for its severe area SIP to meet ROP requirements and for failure to attain.

The GAEPD's severe SIP for the Atlanta area must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate-of-progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. These adopted regulations must include, at a minimum, the regulations to meet the specific requirements listed above and any other emission reductions necessary to achieve attainment.

XII. Rate-of-Progress (ROP) Schedule

The section 182(c)(2)(B) reasonable further progress requirement requires volatile organic compounds (VOC) or nitrogen oxides (NO_X) reductions of 3 percent per year, averaged over a 3-year period, until the attainment date, for serious and above ozone nonattainment areas designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the ROP requirement.

The first required post-1999 ROP 9 percent reduction originally was required by November 15, 2002 under the CAA. However, that date has elapsed prior to the time Atlanta was redesignated and first became subject to the requirement. Therefore, in this action EPA is allowing the Atlanta area to demonstrate that the first required post-1999 9 percent ROP is achieved as expeditiously as practicable after November 15, 2002, but in any case no later than November 15, 2005. EPA is also allowing the Atlanta area to link contingency measures for the 2002 ROP milestone to this new date.

In light of the fact that the statutory deadline has passed, it is impossible for the State to demonstrate any progress by a date that passed before the time the area became classified as a severe area and thus first became subject to the requirement to demonstrate post-1999 ROP. EPA agrees that the Atlanta area must now demonstrate such progress, but reasonably concludes that the State must have some time in which to actually develop and implement the measures to achieve such ROP. EPA has addressed similar issues on several occasions in the past when areas for various reasons have not timely submitted progress SIPs, and when the date for achieving progress had passed prior to EPA action on a progress SIP. EPA has routinely concluded in these circumstances that the area should demonstrate the required ROP as expeditiously as practicable once the statutory date for achieving such ROP had passed. *See, e.g.*, 65 FR 31485 (May 18, 2000), 63 FR 28898 (May 27, 1998), 62 FR 31343 (June 9, 1997). Even though there is no provision in the statute expressly addressing the situation where an area has failed to timely submit a progress SIP, EPA must fill the statutory gap where such SIPs are submitted after the date for achieving progress, and EPA has reasonably done so in this case by following its past practice of requiring such SIPs to demonstrate ROP as expeditiously as practicable. Although no court has directly addressed the issue of the propriety of this ''as expeditious as practicable'' standard, courts have addressed other issues concerning ROP plans submitted after the statutory date for achieving ROP, which have demonstrated ROP as expeditiously as practicable, without expressing any concern with that standard. *See, e.g., Sierra Club* v. *EPA*, 252 F.3d 943 (8th Cir. 2001) (Court upheld calculation methods used in 15 percent ROP plan submitted three years after statutory date demonstrating achievement of ROP seven years after statutory date).

For the reasons set forth in this final rulemaking notice and pursuant to section 182(i) of the CAA, EPA is allowing the Atlanta area to demonstrate the first required post-1999 9 percent ROP, due under the CAA by November 15, 2002, as expeditiously as practicable after that date (but in any case no later than November 15, 2005) in the event that control measures currently in the Atlanta area SIP or already promulgated by EPA did not achieve the required 9 percent reduction by November 15, 2002.

The severe area SIP will have to provide for a total of a 3 percent per year reduction from base line emissions between November 15, 1999, and the attainment year. Because the 2002 ROP deadline is now past, the ROP reduction requirement for the period 1999 to 2002 will have to be achieved as expeditiously as practicable after November 15, 2002. EPA understands that the GAEPD would likely submit one ROP plan which includes all the ROP required until the attainment date, and will demonstrate that the 1999–2002 increment is achieved as expeditiously as practicable. The State must submit by July 1, 2004, an ROP plan to achieve a three percent reduction in the precursor emissions per year until the as expeditiously as practicable attainment year. Additionally, the area must submit adequate on-road mobile source emission budgets consistent with that plan.

Because EPA is allowing the GAEPD to demonstrate the first required post-1999 9 percent ROP, due under the CAA by November 15, 2002, as expeditiously as practicable after that date (but in any case no later than November 15, 2005), EPA is also allowing the GAEPD to adopt contingency measures keyed to this new date. Thus, the GAEPD must submit contingency measures to take effect if the area fails to achieve the first post 1999 9 percent ROP by the as expeditiously as practicable date.

XIII. Use of MOBILE6 in SIP Submittals

The January 18, 2002, memorandum from John S. Seitz and Margo Tsirigotis Oge ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity'' indicates, among other things, that newly developed SIPS, including the motor vehicle emissions budgets in the post-1999 rate-of-progress plans, will have to be developed using MOBILE6. Using MOBILE6 may require a revision to the 1990 base year inventory and ROP targets.

XIV. Impacts on the Title V Program

Upon reclassification to severe, the major stationary source threshold will be lowered. Consequently, the State's Title V operating permits program regulations need to cover existing sources that will become subject to the appropriate lower major stationary source threshold. Any new major

stationary sources must submit a timely Title V permit application. ''A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.'' *See* 40 CFR 70.5(a)(1). The 12 month (or earlier date set by the applicable permitting authority) time period to submit a timely application will commence on the effective date of the reclassification.

XV. Vacatur of Previous Approval

On May 7, 2002, EPA granted final approval to the 1-hour ozone attainment demonstration for the Atlanta area and extended the attainment date to November 15, 2004, (see 67 FR 30574). Subsequently, the Southern Organizing Committee for Economic and Social Justice, the Georgia Coalition for the People's Agenda and the Sierra Club petitioned for review of the agency's action to the 11th Circuit Court of Appeals alleging that EPA exceeded its authority because the CAA precludes extension of attainment dates. Due to a series of prior rulings, in other cases, which held that EPA's attainment date extension policy was an invalid exercise of EPA's authority, on February 20, 2003, EPA filed, with the 11th Circuit, a motion for voluntary vacatur of the attainment date extension for the Atlanta area and of EPA's approval of the attainment demonstration. On June 16, 2003, the 11th Circuit granted the request for voluntary vacatur and remanded the matter to the agency for further proceedings consistent with this order.

One result of vacating the attainment demonstration for the Atlanta area is that the MVEBs contained in that approval were vacated as well. The vacatur of the MVEB resulted in reverting to the previously approved MVEBs for the purposes of transportation conformity. These budgets can be found in the approval of the 15 Percent Rate of Progress plan and the Post 1996 Rate of Progress Plan. These plans were granted final approval on April 26, 1999, (*see* 64 FR 20186) and March 18, 1999, (*see* 64 FR 13348), respectively.

XVI. Comment and Response

In the December 11, 2001, notice of supplemental proposed rulemaking (66 FR 63972) for this action, EPA proposed to find that the Atlanta area had failed to attain the 1-hour ozone NAAQS by November 15, 1999, the date set forth in the CAA for serious nonattainment areas and that if EPA finalized this finding, the Atlanta area would be reclassified, by operation of law, as a severe nonattainment area. EPA also solicited comment on the schedule for submittal of the SIP revisions required for severe areas should the area be reclassified.

In this document, EPA is responding to adverse comments that are germane to this final action and which were submitted in response to the December 11, 2001 (66 FR 63972), supplemental proposed rulemaking. EPA received no adverse comments pertaining to the data used for our nonattainment determination, and therefore we are making the determination that the Atlanta area did not attain by its attainment deadline.

Comment: Reclassification to severe nonattainment would not shorten the time for meeting Atlanta's air quality goals. In fact, it would extend the time for compliance to at least 2005. Regardless of whether EPA grants an extension pursuant to the downwind extension policy, EPA is prohibited from reclassifying the Atlanta area under Subpart 2 of the federal CAA. Under 42 U.S.C. 7509(c), an area can be reclassified only if EPA makes a formal finding ''[w]ithin 6 months following the applicable attainment date'' that the area failed to attain the ozone NAAQS. EPA did not make such a determination within six months of the nominal 1999 attainment deadline for the Atlanta area, and thus is now prohibited from doing so.

Response: EPA agrees that reclassification must be based on a notice and comment rulemaking. See D.C. Circuit Slip opinion *Sierra Club* v. *Whitman* No. 01–5123 and 015299 April 5, 2002, Slip Opinion (D.C. Cir). EPA does not agree, however, that missing a mandatory deadline means that EPA loses the power to act to discharge the duty to which the deadline applied. EPA retains the power to act to discharge the duty after the deadline has passed. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 121 F.3d 106, 113–114 (3d Cir. 1997). (EPA does not lose power to perform mandatory duty to act on redesignation request after 18-month statutory period has elapsed).

XVII. Final Action

For the reasons set forth in the notice of proposed rulemaking and in this final rulemaking notice, EPA has determined that the Atlanta 1-hour ozone nonattainment area failed to attain the 1-hour ozone NAAQS by November 15, 1999, as required by section 181(a) of the CAA, and the Atlanta 1-hour ozone nonattainment area is reclassified by operation of law to severe ozone nonattainment pursuant to section 181(b)(2) of the CAA.

XVIII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.''

The Agency has determined that the finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action to reclassify the Atlanta area as a severe ozone nonattainment area and to adjust applicable deadlines does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

C. Paperwork Reduction Act

This final action to reclassify the Atlanta area as a severe ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. 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.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

Under section 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 annual 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 believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under 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 final action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

G. Executive Order 13132, Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' 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 determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law 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 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

H. Executive Order 13175, Coordination With Indian Tribal Governments

This final 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).

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), EPA must prepare for those matters identified as significant energy actions. A ''Significant energy action'' is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that is a significant regulatory action under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. Under Executive Order 12866, this action is not a ''significant regulatory action''. For this reason, the proposed finding of nonattainment and reclassification is

also not subject to Executive Order 13211.

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 November 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 to reclassify the Atlanta area as a severe ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

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

Dated: September 15, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

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

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

■ 2. In § 81.311 the table entitled ''Georgia—Ozone (1-hour standard)'' is amended by revising the entry for the Atlanta area to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Classification
Atlanta Area:				
Cherokee County	11/15/1990	Nonattainment	1/01/2004	Severe.
Clayton County	11/15/1990	Nonattainment	1/01/2004	Severe.
Cobb County	11/15/1990	Nonattainment	1/01/2004	Severe.
Coweta County	11/15/1990	Nonattainment	1/01/2004	Severe.
DeKalb County	11/15/1990	Nonattainment	1/01/2004	Severe.
Douglas County	11/15/1990	Nonattainment	1/01/2004	Severe.
Fayette County	11/15/1990	Nonattainment	1/01/2004	Severe.
Forsyth County	11/15/1990	Nonattainment	1/01/2004	Severe.
Fulton County	11/15/1990	Nonattainment	1/01/2004	Severe.
Gwinnett County	11/15/1990	Nonattainment	1/01/2004	Severe.
Henry County	11/15/1990	Nonattainment	1/01/2004	Severe.
Paulding County	11/15/1990	Nonattainment	1/01/2004	Severe.
Rockdale County	11/15/1990	Nonattainment	1/01/2004	Severe.
*	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

[FR Doc. 03–24404 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0264; FRL–7321–4]

Imazapyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of imazapyr [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid] in or on grass, forage; grass, hay; fish; shellfish; fats of cattle, sheep, goats, and horses; kidney of cattle, sheep, goats, and horses; meat byproducts (except kidney) of cattle, sheep, goats, and horses; meat of cattle, sheep, goats, and horses; and milk.. BASF 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 September 26, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0264, must be received on or before November 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: Jim 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in **FOR FURTHER INFORMATION CONTACT**. 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–2003–0264. 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 August 13, 2003 (68 FR 48362) (FRL–7321–7), 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 a pesticide petition (PP 0F6166) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. That notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.500 be amended by establishing a tolerance for residues of the herbicide imazapyr, in or on grass, forage at 100 parts per million (ppm); grass, hay at 30 ppm; fish at 1.0 ppm; shellfish at 0.10 ppm; fats of cattle, sheep, goats, and horses 0.05 ppm; kidney of cattle, sheep, goats, and horses at 0.20 ppm; meat byproducts (except kidney) of cattle, sheep, goats, and horses at 0.05 ppm; meat of cattle, sheep, goats, and horses at 0.05 ppm; and milk at 0.01 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 (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of imazapyr on grass, forage at 100 ppm; grass, hay at 30 ppm; fish at 1.0 ppm; shellfish at 0.10 ppm; fats of cattle, sheep, goats, and horses 0.05 ppm; kidney of cattle, sheep, goats, and horses at 0.20 ppm; meat byproducts (except kidney) of cattle, sheep, goats, and horses at 0.05 ppm; meat of cattle, sheep, goats, and horses at 0.05 ppm; and milk at 0.01 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 imazapyr are discussed in Tables 1 and 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 1.—ACUTE TOXICITY OF IMAZAPYR TECHNICAL GRADE ACTIVE INGREDIENT (TGAI).

Guideline No/Study Type	Results	Toxicity Category
870.1100 Acute Oral	LD_{50} = >5,000 mg/kg	IV

TABLE 1.—ACUTE TOXICITY OF IMAZAPYR TECHNICAL GRADE ACTIVE INGREDIENT (TGAI).—Continued

Guideline No/Study Type	Results	Toxicity Category
870.1200 Acute Dermal	LD_{50} = >**2,000** mg/kg	III
870.1300 Acute Inhalation	LC_{50} = >1.3 mg/L (gravimetric) >5.1 mg/L (nominal)	III
870.2400 Primary Eye Irritation	Corneal Opacity; Conjunctive: redness, Chemosis & Discharge; Vascularization of Cornea; Corrosive: Irreversible Eye Damage	I
870.2500 Primary Skin Irritation	Non-irritating to slight erythema and edema	IV
870.2600 Dermal Sensitization	Negative	

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents (rat)	Dermal and Systemic NOAEL =1,695 mg/kg/day for males and =1,784 mg/kg/day for females highest dose tested (HDT). This was the HDT; therefore, there is no LOAEL.
870.3200	21/28-Day dermal toxicity (rabbit)	Dermal and Systemic NOAEL = 400 mg/kg/day. This was the HDT; therefore, there is no LOAEL.
870.3700	Prenatal developmental toxicity in rodents (rat)	Maternal NOAEL = 300 mg/kg bw/day. LOAEL =1,000 mg/kg bw/day, based on salivation. Developmental NOAEL =1,000 mg/kg/day. This was the HDT; therefore, there is no LOAEL.
870.3700	Prenatal developmental toxicity in nonrodents (rabbit)	Maternal NOAEL =400 mg/kg bw/day This was the HDT; therefore, there is no LOAEL. Developmental NOAEL =400 mg/kg bw/day. This was the HDT; therefore, there is no LOAEL.
870.3800	Reproduction and fertility effects (rat)	Parental systemic, reproductive and offspring NOAEL =10,000 ppm (738 mg/kg bw/day in males 933.3 mg/kg bw/day in females). This was the HDT; therefore, there is no LOAEL.
870.4100	Chronic toxicity (rodent)	NA; see 870.4300
870.4100	Chronic toxicity (dog)	NOAEL is =10,000 ppm (250 mg/kg/day). This was the HDT; therefore, there is no LOAEL.
870.4200	Carcinogenicity (rat)	NA; see 870.4300
870.4200	Carcinogenicity (mouse)	NOAEL =10,000 ppm (1,301 mg/kg/day in males and 1,639 mg/kg/day in females). This was the HDT; therefore, there is no LOAEL.
870.4300	Combined Chronic/carcinogenicity (rat)	Increase in brain astrocytomas in male rats for which there was a statistically significant positive trend, but which was not statistically significant in pairwise comparison to controls. The CPRC considered the astrocytomas in the male rats unrelated to treatment because there was no statistically significant pairwise increase. Dosing was considered to be adequate based on the HDT of 10,000 ppm which exceeds the limit dose of 7000 ppm for mice.
870.5100	Bacterial reverse mutation (Ames Assay)	Negative up to 5,000 μg/plate.
870.5300	*In vitro* mammalian cell gene mutation	Negative up to toxic doses (5,000 μg/ml) with and without activation.
870.5375	*In vitro* mammalian chromosome aberration (CHO)	Negative up to toxic doses (5,000 μg/ml) with and without activation.

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5450	Rodent Dominant Lethal	Reported as negative (though unacceptable).
870.5550	Unscheduled DNA synthesis (RPH)	Reported as negative (though unacceptable).
870.7485	Metabolism and pharmacokinetics (rat)	No sex-related differences in absorption were apparent. Within 48 hours of treatment, >90% of the administered dose was recovered in the excreta suggesting that elimination of the labeled test material was rapid. No specific sequestering tissues or organs were identified. Seven days after treatment, essentially all the test material had been eliminated. Rats that received the test material by intravenous injection excreted 87-95% of the administered dose in the urine and approximately 6% into the feces. This suggests that 15-28% if the administered dose recovered in the feces represents unabsorbed material. Metabolite characterization studies show that essentially all of the test material was excreted unchanged. Two minor metabolites CL 252,974 and CL 60,032 were detected in the urine or feces of treated rats; however, their contribution combined was <0.5% of the administered dose. Up to 12 additional unidentified metabolites were isolated, but they constituted >3% of the administered dose. Based on the results, the study author suggests that what limited metabolism of CL 243,997 occurs, proceeds through hydrolysis to form the 2-carbonyl derivatives: CL 252,974 and CL 60,032.
870.7600	Dermal penetration	NA

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 margin of exposure (MOE). A UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (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.

A summary of the toxicological endpoints for imazapyr used for human risk assessment is shown in Table 3 of this unit:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMAZAPYR FOR USE IN HUMAN RISK ASSESSMENT.

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age and General population including infants and children)	none	none	An acute dietary endpoint was not selected based on the absence of an appropriate endpoint attributable to a single dose.
Chronic Dietary (All populations)	Oral Study NOAEL= 250 mg/kg/day UF = 100 Chronic RfD= 2.5 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 2.5 mg/kg/day	1-Year Dog [feeding] Study No LOAEL was demonstrated with imazapyr at doses up to 250 mg/kg/day (HDT); HIARC recommended this dose for RA for imazapyr, based on skeletal muscle effects seen in dogs with structural analog imazapic
Short- and Intermediate- Term Incidental Oral (1-30 days and 1-6 months)	Oral Study NOAEL= 250 mg/kg/day	LOC for MOE= NA (Occupational) LOC for MOE =100 (Residential, includes the FQPA SF - At present time no residential uses)	1-Year Dog [feeding] Study No LOAEL was demonstrated with imazapyr at doses up to 250 mg/kg/day (HDT); HIARC recommended this dose for RA for imazapyr, based on skeletal muscle effects seen in dogs with structural analog imazapic

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMAZAPYR FOR USE IN HUMAN RISK ASSESSMENT.—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short- and Intermediate- and Long-Term Dermal (1 to 30 days, 1 to 6 months, ≤6 months)	Oral study NOAEL= 250 mg/kg/day (dermal absorption rate = 100 %)	LOC for MOE =100 (Occupational) LOC for MOE =100 (Residential, includes the FQPA SF - At present time no residential uses)	1-Year Dog [feeding] Study No LOAEL was demonstrated with imazapyr at doses up to 250 mg/kg/day (HDT); HIARC recommended this dose for RA for imazapyr, based on skeletal muscle effects seen in dogs with structural analog imazapic.
Short- and Intermediate- and Long-Term Inhalation (1 to 30 days, 1 to 6 months, >6 months)	Oral study NOAEL= 250 mg/kg/day (inhalation absorption rate = 100%	LOC for MOE =100 (Occupational) LOC for MOE =100 (Residential, includes the FQPA SF - At present time no residential uses)	1-Year Dog [feeding] Study No LOAEL was demonstrated with imazapyr at doses up to 250 mg/kg/day (HDT); HIARC recommended this dose for RA for imazapyr, based on skeletal muscle effects seen in dogs with structural analog imazapic
Cancer Risk	A quantitative cancer risk assessment is not required for imazapyr	N/A	2-Year Chronic [feeding] Toxicity/Carcinogenicity Study in Rats: Group E - ''no evidence of carcinogenicity in at least 2 adequate animal tests in different species.''

* 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 180.500) for the residues of imazapyr, in or on corn, field, forage; corn, field, grain; and corn field, stover at 0.05 ppm. Risk assessments were conducted by EPA to assess dietary exposures from imazapyr in food as follows:

i. *Acute exposure.* Quantitative 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. No appropriate endpoint attributable to a single exposure was identified for imazapyr.

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 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The dietary exposure analysis assumed 100% crop treated tolerances and residues. Based on total food exposure for imazapyr, all population subgroups are below 1% cPAD (Chronic Population Adjusted Dose).

iii. *Cancer.* Imazapyr showed no evidence of carcinogenicity in at least 2 adequate animal tests in different species, and therefore, a quantitative cancer risk assessment was not performed.

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

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 imazapyr they are further discussed in the aggregate risk section E.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of imazapyr for acute exposures are estimated to be 137 parts per billion (ppb) for surface water and 1,700 ppb for ground water. The EECs for chronic exposures are estimated to be 81 ppb for surface water and 1,700 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). Imazapyr is currently registered for use on the following residential sites that could

result in non-occupational, non-dietary exposure: Driveways, parking areas, brick and gravel pathways, patios, and along sidewalks and bare ground. In addition to residential sites on which imazapyr is registered, there is the possibility of recreational exposure for post application exposure from the registered use on golf courses and fairgrounds and exposure from incidental ingestion and dermal exposure from swimming in treated water from the proposed aquatic weed control use. The risk assessment was conducted using the following exposure assumptions:

i. *Residential handler*. Short-term (1 to 30 days) dermal and inhalation exposure from mixing, loading and application via sprinkler can could occur. For the Outdoor Residential Exposure Task Force study reviewed, the Health Effects Division (HED) used a hose-end sprayer as surrogate data for the sprinkler can scenario. The registered label states that the product offers long-term weed control and prevents re-growth for up to one year with a single application; therefore only short-term handler exposures are anticipated.

ii. *Residential post-application*. Adults and children are anticipated to have short-term dermal exposures; however, given that the product is not intended for lawn use, dermal exposures by adults and children are considered to be negligible as compared to recreational post-application exposures. (See fairground post-application). However, toddlers could potentially ingest soil from treated bare ground in the residential use scenario. The assumptions used to assess the soil ingestion scenario were: Day of treatment residues are assumed to be available for short-term exposure, toddler body weight is estimated at 15 kg, 100 % of application rate is available in the top 1 cm of soil for soil ingestion exposures, and a toddler can possibly ingest 100 mg soil/day.

iii. *Golfer post-application*. Golfer exposure assumptions are: One round of golf (18 holes) takes 4 hours and an average golfer plays 18 times per year, so short-term dermal exposures are anticipated. Inhalation exposures are considered to be negligible since the vapor pressure of imazapyr was reported by the registrant to be $<2x\ 10^{-7}$ mm Hg (vs. HED ExpoSAC vapor pressure threshold of $1\ x\ 10^{-5}$ mm Hg). 5% of the maximum application rate is available as turf transferrable residues (TTR) available on Day 0 (assumes no dissipation). The transfer coefficient (TC) for dermal exposure is assumed to be 500 cm2/hr based on golfers wearing short pants and short-sleeved shirts. The exposure estimate for child golfers is 1.7 times the adult exposure estimate to account for differences in body weight and surface area. Maximum labeled application rate is 0.0041 lb ae/A broadcast liquid formulation applications.

iv. *Fairground post-application*.—a. The following assumptions were used to assess dermal exposures to adults and toddlers after contact with treated lawns: Adult and toddler body weights are 70 kg and 15 kg respectively, 5% of the maximum application rate represents fraction of imazapyr available as dislodgeable foliar reside (DFR) on the day of treatment. Dermal TC for adults is 14,500 cm2/hr, and for toddlers, 5,200 cm2/hr with an exposure duration of 2 hours.

b. To assess hand-to-mouth exposures for toddlers after contact with treated turf, the following assumptions were used: residues are assumed to be available for the short-term and intermediate-term exposure durations. Toddler body weight is 15 kg, hand surface area is 20 cm2, and a toddler performs 20 hand-to-mouth events per hour for short-term exposures. 5% of application rate represents fraction of imazapyr available for transfer to hands on the day of treatment with a 50% saliva extraction factor. 100% of the application rate is available in the top 1 cm of soil for soil ingestion exposures, and a toddler can ingest 100 mg of soil a day. The exposure duration is 2 hours per day.

c. To assess object-to-mouth exposures for toddlers after contact with treated turf, the following assumptions were used: Residues are assumed to be available for the short-term and intermediate-term exposure durations, the toddlers' body weight is 15 kg, 20% of the application rate is available as dislodgeable residues on the day of treatment, the object area is 25 cm2, 100% of the application rate is available in the top 1 cm of soil for soil ingestion exposures,a toddler can ingest 100 mg of soil a day, and the exposure duration is 2 hours per day.

v. *Swimmer post-application*. For incidental ingestion and dermal exposure, the following assumptions are made: The worst-case estimate of imazapyr in the top one-foot of the water column in a treated waterbody is 550 ppb. 100% of this concentration is assumed available for ingestion at a rate of 0.05 L/hr. The exposure duration is 2 hours a day for non-competitive adult and child swimmers. Body weights of 70 kg for adults, 29 kg for children, and 15 kg for toddlers are assumed. For dermal exposure, the body surface area of an adult is 20,670 cm2 and 14,580 cm2 for toddlers and children. The permeability coefficient is assumed at $5.85\ x\ 10^{-5}$ cm/hr.

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 imazapyr 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, imazapyr 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 imazapyr 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 ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base 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 prenatal or postnatal sensitivity was found.

3. *Conclusion*. There is a complete toxicity data base for imazapyr and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the Special FQPA SF of 10x can be reduced to 1x because:

i. Lack of concern for pre- and post-natal toxicity.

ii. No qualitative/quantitative evidence of increased susceptibility of rat or rabbit fetuses to in utero exposure was reported in the developmental studies at doses up to 1,000 mg/kg/day (limit dose) in the rat and 400 mg/kg/day (HDT) in the rabbit.

iii. There is no concern for developmental neurotoxicity resulting from exposure to imazapyr. While there were no neurotoxicity studies available from the published literature, there was no evidence of neurotoxicity/neuropathology in adult animals in the available studies.

iv. The toxicology database is complete based on the developmental studies in the rat and rabbit and the 2-generation reproduction study in the rat

v. No developmental neurotoxicity (DNT) study was required.

vi. No residual uncertainties were identified in the exposure database.

vii. The chronic dietary food exposure assessment utilizes tolerance level residues and 100% CT information for all commodities. By using these screening level assumptions, actual exposures/risks will not be underestimated.

viii. The dietary drinking water assessment utilizes water concentration values generated by models and associated modeling parameters which are designed to provide conservative, health-protective, high-end estimates of water concentrations which will not likely be exceeded.

ix. Residential exposure and risk were assessed using standard assumptions from Science Advisory Council on Exposure (Expo SAC) Standard Operating Procedure (SOP). These assumptions are not expected to underestimate risk.

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, the Office of Pesticide Programs (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*. No acute risk from exposure to imazapyr is expected because there were no toxic effects of concern attributable to a single dose identified in available data.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imazapyr from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for all infants (<1 year old) and <1% of the cPAD for children ages 1–2 years old. Based the use pattern, chronic residential exposure to residues of imazapyr is not expected. In addition, there is potential for chronic dietary exposure to imazapyr in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

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

Population Subgroup	cPAD (mg/kg/day)	Chronic Food Exposure (mg/kg/day)	Maximum Chronic Water Exposure[1] (mg/kg/day)	Ground Water EEC[2] ppb	Surface Water EEC[2] ppb	Chronic DWLOC[3] ppb
U.S. Population	2.5	0.00034	2.499	1,700	81	87,000
All infants (< 1 year old)	2.5	0.000273	2.499	1,700	81	25,000
Children (1-2 years old)	2.5	0.000828	2.499	1,700	81	25,000
Children (3-5 years old)	2.5	0.00073	2.499	1,700	81	25,000
Children (6-12 years old)	2.5	0.000499	2.499	1700	81	75,000
Youth (13-19 years old)	2.5	0.000309	2.499	1,700	81	75,000
Adults (20-49 years old)	2.5	0.000267	2.499	1,700	81	87,000
Females (13-49 years old)	2.5	0.000257	2.499	1,700	81	87,000

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

Population Subgroup	cPAD (mg/kg/day)	Chronic Food Exposure (mg/kg/day)	Maximum Chronic Water Exposure[1] (mg/kg/day)	Ground Water EEC[2] ppb	Surface Water EEC[2] ppb	Chronic DWLOC[3] ppb
Adults (50+ years old)	2.5	0.000287	2.499	1,700	81	87,000

[1]maximum water exposure (mg/kg/day) = cPAD (mg/kg/day) - food exposure (mg/kg/day)
[2]The crop producing the highest level was used.
[3]DWLOC calculated as follows: DWLOC = (maximum water exposure (mg/kg/day)) * (body weight (kg)) * (1,000 μg/mg)/water consumption (liter/day)

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).

Imazapyr is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for imazapyr. Short-term aggregate risk assessments are required for adults as there is potential for both dermal and inhalation handler exposure, and dermal post-application exposure from the residential and recreational uses of imazapyr on turf and swimmer exposure. In addition, short-term aggregate risk assessments are required for children and toddlers because there is a potential for oral and dermal post-application exposure resulting from the residential uses of imazapyr on turf and from swimming. The short-term residential handler scenario results in the highest exposure for adults. Therefore, for adults, the homeowner handler scenario was aggregated with the chronic dietaryfood exposure for the U.S. General population. The swimmer scenario resulted in the highest exposure for toddlers and children. Therefore, the swimmer scenario exposure estimates were aggregated with the chronic dietary (food) to provide a worst-case estimate of short-term aggregate risk for children 1-2 years old.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 75,000 for the United States population, and 55,000 for children 1-2 years old. These aggregate MOEs do not exceed the Agency's level of concern, an MOE of 100, for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of imazapyr in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IMAZAPYR

Population Subgroup	Aggregate MOE (Food + Residential)[1]	Aggregate Level of Concern (LOC)[2]	Surface Water EEC[3] (μg/L)	Ground Water EEC[3] (μg/L)	Short-Term DWLOC[4] (ppb)
U.S. Population	75,000	100	81	1,700	87,000
Children 1-2 years old	55,000	100	81	1,700	25,000

[1]Aggregate MOE = [NOAEL / (Avg Food Exposure + Residential Exposure)]
[2]The level of concern (target MOE) includes 10X for interspecies extrapolation and 10X for intraspecies variation (MOE<100)
[3]The crop producing the highest level was used
[4]DWLOC calculated as follows: DWLOC = (maximum water exposure (mg/kg/day)) * (body weight (kg)) * (1,000 μg/mg)/water consumption (liter/day)

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). Though residential exposure could occur with the use of imazapyr, the short-term and intermediate-term endpoints are the same and thus the short-term assessment is conservative for the intermediate-term. 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*. Imazapyr is not expected to pose a cancer risk because no evidence of carcinogenicity was found in at least 2 adequate animal tests in different species.

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 imazapyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Two methods are currently listed in the Pesticide Analytical Manual (PAM) Vol. II for enforcing tolerances of imazapyr in or on corn commodities; Method M 2468 is a gas chromatography/mass spectrometry (GC/MS) methods with a limit of quantitation (LOQ) of -0.01 ppm for imazapyr in or on corn grain, forage and fodder, and Method M 2657 is a capillary electrophoresis (CE) method with ultraviolet (UV) detection that has a LOQ of 0.05 ppm for imazapyr in or on corn grain, forage and fodder.

CE/UV methods were proposed for determining imazapyr in or on grass forage and hay (M 3023), in livestock tissues (M 3184), in milk and milk fat (M 3075 and M 3223), and in fish and shellfish tissues (M 3066). These methods are similar to the current enforcement method M 2657, and based on the concurrent method recovery data

submitted, are adequate for collecting data on residues of imazapyr in grass forage and hay, cattle tissues and milk, and fish and shellfish.

The CE/UV Methods M 3023, M 3184, M 3075, and M 3066 have been forwarded to the Analytical Chemistry (ACB) for petition method validation (PMV) trials. Conclusions regarding the suitability of the proposed enforcement methods will be deferred until completion of the PMV trials.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of imazapyr in or on any of the crops involved in the proposed new uses.

C. Conditions

Prior to granting unconditional registration, the registrant will be required to address the following issues:

1. Fish metabolism study
2. Corn or grass storage stability information or study
3. Additional spray additive information supporting the grass field trials.

V. Conclusion

Therefore, the tolerance is established for residues of imazapyr in or on grass, forage at 100 ppm; grass, hay at 30 ppm; fish at 1.0 ppm; shellfish at 0.10 ppm; fats of cattle, sheep, goats, and horses 0.05 ppm; kidney of cattle, sheep, goats, and horses at 0.20 ppm; meat byproducts (except kidney) of cattle, sheep, goats, and horses at 0.05 ppm; meat of cattle, sheep, goats, and horses at 0.05 ppm; and milk at 0.01 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–2003–0264 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 November 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–2003–0264, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

Dated: September 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.

■ 2. Section 180.500 is revised to read as follows:

§ 180.500 Imazapyr; tolerances for residues.

(a) *General.* Tolerances are being established for residues of the herbicide imazapyr, [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid], applied as the acid or ammonium salt, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, kidney	0.20
Cattle, meat	0.05
Cattle, meat by-products (except kidney)	0.05
Corn, field, forage	0.05
Corn, field, grain	0.05
Corn, field, stover	0.05
Fish	1.0
Goats, fat	0.05
Goats, kidney	0.20
Goats, meat	0.05
Goats, meat by-products (except kidney)	0.05
Grass, forage	100
Grass, hay	30
Horses, fat	0.05
Horses, kidney	0.20
Horses, meat	0.05
Horses, meat by-products (except kidney)	0.05
Milk	0.01
Sheep, fat	0.05
Sheep, kidney	0.20
Sheep, meat	0.05
Sheep, meat by-products (except kidney)	0.05
Shellfish	0.10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–24123 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0289; FRL–7324–8]

Etoxazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on cotton, pome fruits, strawberries, and imported tangerines. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 26, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0289, must be received on or before November 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: Daniel C. Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@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–2003–0289. 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 August 13, 2003 (68 FR 48377) (FRL–7322–6), 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 a pesticide petition (PP 2F6420) by Valent U.S.A. Corporation, 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596. That notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on cottonseed at 0.05 parts per million (ppm); cotton, gin byproducts (gin trash) at 1.0 ppm, pome fruit (Crop Group 11) at 0.2 ppm, apple, wet pomace at 1.0 ppm, strawberry at 0.5 ppm, and oranges at 0.10 ppm (to support the importation of mandarin oranges into the U.S.). As residues in processed commodities fed to animals may be transferred to milk and edible tissue of ruminants, tolerances were also proposed for animal fat at 0.03 ppm and milk fat at 0.04 ppm.

Based on EPA's review, the petition was revised by the petitioner to propose tolerances for residues of etoxazole on cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 1.0 ppm; fruit, pome, group 11 at 0.20 ppm; apple, wet pomace at 0.50 ppm; strawberry at 0.50 ppm; tangerine at 0.10 ppm; liver of cattle, goat, horse, and sheep at 0.01 ppm; fat of cattle, goat, horse, and sheep at 0.02 ppm; and milk, fat at 0.01 ppm. Although EPA requested a number of changes to the initial petition, the nature of the changes (i.e., clarification and correction of commodity terms and adjustments in tolerance levels) are not considered significant. Therefore, EPA is issuing this as a final action.

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 residues of etoxazole on cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 1.0 ppm; fruit, pome, group 11 at 0.20 ppm; apple, wet pomace at 0.50 ppm; strawberry at 0.50 ppm; tangerine at 0.10 ppm; liver of cattle, goat, horse, and sheep at 0.01 ppm; fat of cattle, goat, horse, and sheep at 0.02 ppm; and milk, fat at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents (rat)	NOAEL = 61.8/69.0 milligrams/kilogram/day (mg/kg/day) Male/Female (M/F) LOAEL = 183.7/204.8 mg/kg/day (M/F), based upon increases in hepatic enzyme levels, increased liver weights and centrilobular hepatocellular swelling in both sexes and liver enlargement in females only
870.3100	90–Day oral toxicity rodents (rat)	NOAEL = not determined LOAEL = 300.4/336.6 mg/kg/day (M/F), based upon clinical signs, clinical chemistry, increased liver weights, and histopathology
870.3100	90–Day oral toxicity rodents (mouse)	NOAEL = 213.6/250.5 mg/kg/day (M/F) LOAEL = 878.4/994.5 mg/kg/day (M/F), based upon periportal hepatocellular necrosis, increased alkaline phosphatase levels, accompanied by increased relative liver weight, liver enlargement, and centrilobular hepatocellular swelling
870.3150	90–Day oral toxicity in non-rodents (dog)	NOAEL = 5.33/5.42 mg/kg/day (M/F) LOAEL = 53.7/55.9 mg/kg/day (M/F), based upon clinical signs (vomiting foamy fluid and mucous stool), clinical chemistry, increased liver weights, and centrilobular swelling in the liver and acinar cell atrophy in the prostate
870.3200	21/28–Day dermal toxicity (rabbit)	NOAEL = 1,000 mg/kg/day (M/F) LOAEL = not determined. No systemic effects noted
870.3700	Prenatal developmental toxicity in rodents (rat)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = not determined Developmental NOAEL = 1,000 mg/kg/day LOAEL = not determined
870.3700	Prenatal developmental toxicity in nonrodents (rabbit)	Maternal NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based upon liver enlargement and decreased body weight gains and food consumption Developmental NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based upon increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs in the fetuses

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

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 20 mg/kg/day LOAEL = 100 mg/kg/day (M/F), based upon increased liver weights in the P and F_1 males and increased adrenal weights in the P females Offspring/Systemic NOAEL = 20 mg/kg/day LOAEL = 100 mg/kg/day (M/F), based upon pup mortality Reproductive NOAEL = 100 mg/kg/day LOAEL = not determined
870.4300	Combined chronic toxicity/carcinogenicity rodents (rat)	NOAEL = 64 mg/kg/day (M/F) LOAEL = not determined Equivocal evidence of carcinogenicity
870.4300	2–Year feed/carcinogenic (rat)	NOAEL = 1.83/2.07 mg/kg/day (M/F) LOAEL = 187/216 (M/F), based upon effects on the incisors including abnormal amelogenesis No evidence of carcinogenicity
870.4100	Chronic toxicity nonrodents (dog)	NOAEL = 4.62/4.79 mg/kg/day (M/F) LOAEL = 23.5/23.8 mg/kg/day (M/F), based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
	78–Week carcinogenic mouse	NOAEL = 242/243 (M/F) LOAEL = 484/482 (M/F), based on a slight increase in the incidence of a fatty change in the centrilobular hepatocytes in males
870.4200	Carcinogenicity mouse	NOAEL = 241/243 mg/kg/day (M/F) LOAEL = not determined No evidence of carcinogenicity
Non-guideline	13–Week study: Effect on proliferative activity of testicular interstitial cells in rat	A toxic level of the test substance did not affect the proliferative activity of testicular interstitial cells
870.5100	Gene mutation - reverse gene mutation assay in bacteria	When tested up to cytotoxic levels, there was no evidence of induced mutant colonies over background
Non-guideline	Gene mutation - reverse gene mutation assay in bacteria	When tested up to cytotoxic levels, there was no evidence of induced mutant colonies over background
870.5300	Gene mutation - *in vitro* forward gene mutation assay in mouse lymphoma cells	When tested up to cytotoxic levels, mutagenic in the presence of S9 activation and equivocal for mutagenicity in the absence of S9 activation
870.5375	Cytogenetics - *in vitro* mammalian cytogenetics assay	When tested up to cytotoxic levels, not clastogenic in the presence or absence of S9 activation
870.5395	Bone marrow micronucleus assay	There was no significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow after any treatment time
870.5550	Unscheduled DNA synthesis (UDS) in primary rat hepatocytes/mammalian cell cultures	When tested up to cytotoxic levels, there was no evidence that UDS was induced by the test substance

B. Toxicological Endpoints

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

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 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 etoxazole used for human risk assessment is shown in Table 2 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years of age)	NOAEL = None mg/kg/day UF = Not applicable (N/A) Acute RfD = None	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = None	A dose and endpoint attributable to a single dose were not identified in the data base including the developmental toxicity studies
Acute dietary (general population including infants and children)	NOAEL = None mg/kg/day UF = N/A Acute RfD = None	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = None	A dose and endpoint attributable to a single dose were not identified in the data base including the developmental toxicity studies
Chronic dietary (all populations)	NOAEL = 4.62 mg/kg/day UF = 100 Chronic RfD = 0.046 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.046 mg/kg/day	Chronic oral toxicity study - dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
Short-term incidental oral (1–30 days)	NOAEL = 4.62 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Chronic oral toxicity study - dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
Intermediate-term incidental oral (1–6 months)	NOAEL = 4.62 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Chronic oral toxicity study - dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
Short-term dermal (1 to 30 days)	Dermal (or oral) study NOAEL = None	Residential LOC for MOE = N/A Occupational LOC for MOE = N/A	No hazard quantitation required for any duration. No systemic effects noted up to 1,000 mg/kg/day in the 28–day dermal rat study. There are no developmental or reproductive concerns
Intermediate-term dermal (1 to 6 months)	Dermal (or oral) study NOAEL = None	Residential LOC for MOE = N/A Occupational LOC for MOE = N/A	No hazard quantitation required for any duration. No systemic effects noted up to 1,000 mg/kg/day in the 28–day dermal rat study. There are no developmental or reproductive concerns

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

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Long-term dermal (>6 months)	Dermal (or oral) study NOAEL = None	Residential LOC for MOE = N/A Occupational LOC for MOE = N/A	No hazard quantitation required for any duration. No systemic effects noted up to 1,000 mg/kg/day in the 28-day dermal rat study. The weight-of-the-evidence from the 28–day, 90–day, 52–week interim chronic toxicity/carcinogenicity and the 2–year chronic toxicity/carcinogenicity rat studies shows that the systemic effects (mainly in the liver) occur around the same dose levels from short-term through long-term exposure without increasing in severity. Therefore, results of the 28–day dermal toxicity study can be applicable to long-term exposure
Short-term inhalation (1 to 30 days)	Oral study NOAEL = 4.62 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Chronic oral toxicity study - dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
Intermediate-term inhalation (1 to 6 months)	Oral study NOAEL = 4.62 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Chronic oral toxicity study - dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
Long-term inhalation (>6 months)	Oral study NOAEL = 4.62 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Chronic oral toxicity study - dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver
Cancer (oral, dermal, inhalation)	Classified as ''not likely to be carcinogenic to humans''		

* 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*. There are currently no food/feed uses or tolerances for etoxazole. Risk assessments were conducted by EPA to assess dietary exposures from etoxazole in food as follows:

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

ii. *Chronic exposure*. In conducting 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: The assessment assumed that 100% of the proposed crops were treated and that all treated crops and livestock had residues of concern at the tolerance level. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the cPADs are all below 100%). The most highly exposed subgroup is children 1 to 2 years of age, which utilizes 5% of the cPAD.

iii. *Cancer*. EPA has determined that etoxazole is not likely to be a human carcinogen and EPA therefore, does not expect it to pose a cancer risk. As a

result, a quantitative cancer dietary exposure analysis was not performed.

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

The Agency uses the 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 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. 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 LOC.

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 etoxazole they are further discussed in Unit III.E.

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

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Etoxazole is not registered for use on any sites that would result in residential exposure.

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

EPA does not have, at this time, available data to determine whether etoxazole 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 etoxazole and any other substances and etoxazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that etoxazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. There is qualitative evidence of increased susceptibility following exposure to etoxazole in the rat reproduction study. Therefore, EPA performed a Degree of Concern Analysis to determine the LOC for the effects observed when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional UF to be used in the risk assessment of this chemical. If residual uncertainties are identified, EPA examines whether these residual uncertainties can be addressed by a special FQPA safety factor and, if so, the size of the factor needed.

In performing the Degree of Concern Analysis, EPA noted that the effects in the pups in the rat reproduction study are well-characterized with a clear NOAEL. In addition, the pup effects occur at the same dose as maternal toxicity. Furthermore, the doses selected for various risk assessment scenarios are lower than the doses that caused off spring toxicity. There are no residual uncertainties for prenatal/postnatal toxicity in this study. Therefore, although there is evidence of increased qualitative susceptibility in the rat reproduction study, the concern is low.

For the reasons stated above, EPA has concluded that there is low concern for prenatal and/or postnatal toxicity resulting from exposure to etoxazole.

3. *Conclusion*. There is a complete toxicity data base for etoxazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed for the following reasons. The toxicological data base is complete for FQPA assessment and there is low concern for prenatal and/or postnatal toxicity resulting from exposure to etoxazole. The chronic dietary food exposure assessment assumed that 100% of the proposed crops were treated and that all treated crops and livestock had residues of concern at the tolerance level. By using these screening-level assumptions, actual exposures/risks will not be underestimated. In addition, the dietary drinking water assessment utilized modeling results which included conservative assumptions for the parent and all degradates of concern. Since conservative assumptions were used in the water models where environmental fate data are lacking, the water exposure assessment will not

underestimate the potential risks for infant, and children. Finally, there are no registered or proposed residential uses for etoxazole.

E. Aggregate Risks and Determination of Safety

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

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

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

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

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to etoxazole from food will utilize 1% of the cPAD for the U.S. population, 3% of the cPAD for all infants less than 1–year old and 5% of the cPAD for children 1 to 2 years old. There are no residential uses for etoxazole that result in chronic residential exposure to etoxazole. In addition, there is potential for chronic dietary exposure to etoxazole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ETOXAZOLE

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

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

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

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

5. *Aggregate cancer risk for U.S. population*. Etoxazole has been classified as a ''not likely human carcinogen.'' Therefore, etoxazole is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

V. Conclusion

Therefore, the tolerances are established for residues of etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 1.0 ppm; fruit, pome, group 11 at 0.20 ppm; apple, wet pomace at 0.50 ppm; strawberry at 0.50 ppm; tangerine at 0.10 ppm; liver of cattle, goat, horse, and sheep at 0.01 ppm; fat of cattle, goat, horse, and sheep at 0.02 ppm; and milk, fat at 0.01 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–2003–0289 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 November 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–2003–0289, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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: September 16, 2003.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.593 is added to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apple, wet pomace	0.50
Cattle, fat	0.02
Cattle, liver	0.01
Cotton, gin byproducts	1.0
Cotton, undelinted seed	0.05
Fruit, pome, group 11	0.20
Goat, fat	0.02
Goat, liver	0.01
Horse, fat	0.02
Horse, liver	0.01
Milk, fat	0.01
Sheep, fat	0.02
Sheep, liver	0.01
Strawberry	0.50
Tangerine[1]	0.10

[1]There are no U.S. registrations for use of etoxazole on tangerines as of September 26, 2003.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect and inadvertant residues.* [Reserved]

[FR Doc. 03–24368 Filed 9–25–03; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0297; FRL–7328–1]

Bifenazate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of bifenazate and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on almond, hulls; nut, tree, group 14; okra; peppermint, tops; pistachio; spearmint, tops; vegetable, cucurbit, group 9; and, vegetable, fruiting, group 8; and increases the established tolerances for combined residues of bifenazate; diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate); 1,1'-biphenyl, 4-ol; and 1,1'-biphenyl, 4-oxysulfonic acid (expressed as 1,1'-biphenyl, 4-ol) in meat and meat byproducts of cattle, goat, hog, horse, and sheep and milk. EPA is also deleting the bifenazate time-limited tolerance for tomato, which is established in connection with a section 18 emergency exemption. Tomato is included in the tolerance established by this action for vegetable, fruiting group 8. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 26, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0297, must be received on or before November 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: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Industry (NAISC 111, 112, 311, 32532), e.g., Crop production, Animal production, Food manufacturing, and Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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–2003–0297. 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 January 15, 2003 (68 FR 2032) (FRL–7286–4), 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 petition (PP 2E6517) by IR–4, 681 US Highway 1 South, New Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by Crompton Manufacturing Company, Inc. (formerly Uniroyal Chemical Company), Middlebury, CT 06749, the registrant.

The petition requested that 40 CFR 180.572 be amended by establishing tolerances for combined residues of the miticide, bifenazate, (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate), in or on the following commodities: Nut, tree, group 14 at 0.20 ppm; okra at 2.0 ppm; peppermint, tops at 25 ppm; pistachio at 0.20 ppm; spearmint, tops at 25 ppm; vegetable, cucurbit, group 9 at 0.75 ppm; and vegetable, fruiting, group 8 at 2.0 ppm. The petition was subsequently amended by IR-4 to also propose tolerances for combined residues of bifenazate and diazinecarboxylic acid in or on almond hulls at 15 ppm; and to propose increases to the established bifenazate meat, meat byproducts and milk tolerances; and to change the tolerance expression for meat, meat byproducts and milk. IR-4 proposes tolerances for combined residues of bifenazate, (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl) hydrazinecarboxylate); diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate); 1,1'-biphenyl, 4-ol; and 1,1'-biphenyl, 4-oxysulfonic acid (expressed as 1,1'-biphenyl, 4-ol) in or on meat and meat byproducts of

cattle, goat, hog, horse, and sheep at 0.02 ppm and milk at 0.02 ppm. There were no comments received on these petitions.

EPA has received objections to tolerances it established for residues of bifenazate on a variety of food commodities in a final rule published in the **Federal Register** of February 1, 2002 (67 FR 4913) (FRL–6818–3). 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. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has initiated a public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7), which ended on October 16, 2002. Although that proceeding remains ongoing, prior to acting on this current tolerance action, EPA reviewed the bifenazate-specific objections raised by NRDC and has addressed them at relevant points throughout this preamble.

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 bifenazate and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) on almond, hulls at 15 ppm; nut, tree, group 14 at 0.20 ppm; okra at 2.0 ppm; peppermint, tops at 25 ppm; pistachio at 0.20 ppm; spearmint, tops at 25 ppm; vegetable, cucurbit, group 9 at 0.75 ppm; and vegetable, fruiting, group 8 at 2.0 ppm, and combined residues of bifenazate; diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate); 1,1'-biphenyl, 4-ol; and 1,1'-biphenyl, 4-oxysulfonic acid (expressed as 1,1'-biphenyl, 4-ol) in meat and meat byproducts of cattle, goat, hog, horse, and sheep at 0.02 ppm and milk at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the 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 bifenazate are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study	Results
870.3100	90-Day oral toxicity rodents—rat	NOAEL = 13.8 mg/kg/day in males, 3.2 mg/kg/day in females. LOAEL = 27.7 mg/kg/day in males, 16.3 mg/kg/day in females based on decreased body weight gain in both sexes, decreased liver weight in males, increased spleen weight in females, and histopathology in liver in both sexes, and histopathological changes in the spleen and adrenal cortex in males.
870.3150	90-Day oral toxicity non-rodents—dog	NOAEL = 0.9 mg/kg/day in males, 1.3 mg/kg/day in females. LOAEL = 10.4 mg/kg/day in males, 10.7 mg/kg/day in females based on changes in hematological parameters in both sexes, increased bilirubin in the urine in males, increased absolute and relative liver weight in females and liver histopathologic effects in both sexes.
870.3200	21-Day dermal toxicity—rat	NOAEL = 80 mg/kg/day in males and females. LOAEL = 400 mg/kg/day in males and females based on decreased body weight in females, decreased food consumption in both sexes, increased urinary ketones, increased urinary protein, increased urinary specific gravity, and decreased urinary volume in both sexes, and increased incidence of extramedullary hematopoiesis in the spleen in both sexes.
870.3700	Prenatal developmental in rodents—rat	Maternal NOAEL = 10 mg/kg/day. LOAEL = 100 mg/kg/day based on increased clinical signs, and decreased body weight, body weight gain, and food consumption. Developmental NOAEL = 500 mg/kg/day. LOAEL = not established

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

Guideline No.	Study	Results
870.3700	Prenatal developmental in nonrodents—rabbit	Maternal NOAEL = 200 mg/kg/day LOAEL = not established; the dosing in this study are considered adequate based on the results of a range finding study in which a treatment-related increase in the number of does aborting was seen at 250 mg/kg/day and above. Developmental NOAEL = 200 mg/kg/day LOAEL = not established
870.3800	Reproduction and fertility effects—rat	Parental/Systemic NOAEL = 1.6 mg/kg/day in males, 1.8 mg/kg/day in females. LOAEL = 6.5 mg/kg/day in males and 7.4 mg/kg/day in females based on decreased body weight, body weight gain, and food consumption in both sexes. Reproductive NOAEL = 16.4 mg/kg/day in males, 18.3 mg/kg/day in females. LOAEL = not established. Offspring NOAEL = 16.4 mg/kg/day in males, 18.3 mg/kg/day in females. LOAEL = not established
870.4100	Chronic toxicity dogs	NOAEL = 1.01 mg/kg/day in males, 1.05 mg/kg/day in females LOAEL = 8.95 mg/kg/day in males, 10.42 mg/kg/day in females based on changes in hematological and clinical chemistry parameters in both sexes and histopathological effects in bone marrow, liver, and kidney in both sexes.
870.4300	Chronic/Carcino-genicity rats	NOAEL = 3.9 mg/kg/day in males, 4.8 mg/kg/day in females. LOAEL = 9.7 mg/kg/day in males and 9.7 mg/kg/day in females based on decreased body weight, body weight gain, and food consumption in both sexes. No evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = 1.5 mg/kg/day in males, 19.7 mg/kg/day in females. LOAEL = 15.4 mg/kg/day in males, 35.7 mg/kg/day in females based on decreased body weight and body weight gain in females and hematological effects and decreased kidney weight in males. No evidence of carcinogenicity
870.5265	Gene Mutation	Non-mutagenic when tested up to 5000 ug/plate, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA1535, and TA1537 and *E.coli* strain WP2uvra.
870.5300	Gene Mutation	Non-mutagenic at the TK locus in L5178Y mouse lymphoma cells tested up to cytotoxic concentrations or limit of solubility, in presence and absence of S-9 activation.
870.5375	Chromosome aberration	Did not induce structural chromosome aberration in CHO-K1 cell cultures in the presence and absence of activation up to cytotoxic concentrations.
870.5385	Chromosomal aberration	Non-mutagenic in ICR mouse bone marrow micronucleus chromosomal aberrations assay up to cytotoxic concentrations.
870.7485	Metabolism and pharmacokinetics—rat	Total recovery of the administered dose was <93% for all treatment groups. Fecal excretion was the major route of elimination (66–83% of the dose), with eight primary metabolites detected. These metabolites, as well as those identified in the urine and bile, were the result of metabolic reactions including hydrazine oxidation, demethylation, ring hydroxylation, and molecular scission with the loss of hydrazinecarboxylic acid portion with subsequent conjugation.

In its objection to a separate bifenazate tolerance action, NRDC, asserts that developmental toxicity is a data gap for bifenzate. NRDC appears to be referring to language in the Table 1, Unit III.A. of the **Federal Register** final rule of February 1, 2002, that states that a clear assessment of developmental toxicity was not possible in the range finding study used to choose the dose levels for the developmental toxicity study in rabbits. The Agency concludes there are acceptable developmental toxicity studies conducted with bifenazate in rats and in rabbits, and an acceptable 2-generation reproduction study in rats, which are described in Table 1. of this unit.

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 intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety 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 bifenazate used for human risk assessment is shown is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENAZATE 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 and females 13–50 years old	NA	NA	An acute dietary endpoint was not selected based on the absence of an appropriate endpoint attributed to a single dose.
Chronic Dietary; all populations	NOAEL= 1.0 mg/kg/day UF = 100 cRfD = 0.01 mg/kg/day	Special FQPA SF = 1X cPAD = 0.01 mg/kg/day	LOAEL = 8.9/10.4 mg/kg/day [M/F] based on changes in hematological and clinical chemistry parameters, and histopathology in bone marrow, liver, and kidney in the One Year Dog Feeding Study
Incidental Oral, Short Term (1–30 days)	oral NOAEL = 10 mg/kg/day	LOC for MOE ≤ 100 (residential)	Maternal LOAEL = 100 mg/kg/day based on clinical signs, decreased body weight and food consumption during the dosing period in the Rat Developmental Study
Incidental Oral, Intermediate Term (30 days-6 months)	oral NOAEL = 0.9 mg/kg/day	LOC for MOE ≤ 100 (residential)	LOAEL = 10.4/10.7 mg/kg/day [M/F] based on changes in hematologic parameters in the 90-Day Subchronic Dog Study
Short-, Intermediate- and Long-Term Dermal (1-30 days, 30 days-6 months, and six months to lifetime)	dermal NOAEL= 80 mg/kg/day	LOC for MOE ≤ 100 (residential)	LOAEL = 400 mg/kg/day based on decreased body weight and food consumption, hematologic effects, increased spleen weight and extramedullary hemapoiesis in the spleen in the 21-Day Dermal Toxicity Study in Rats
Short-Term Inhalation (1–30 days)	oral NOAEL= 10 mg/kg/day inhalation absorption rate = 100%	LOC for MOE ≤ 100 (residential)	LOAEL = 100 mg/kg/day based on decreased body weight and food consumption in the Rat Developmental Study
Intermediate-Term Inhalation (30 days-6 months)	oral NOAEL= 0.9 mg/kg/day inhalation absorption rate = 100%	LOC for MOE ≤ 100 (residential)	LOAEL = 10.4/10.7 mg/kg/day based on changes in hematologic parameters in the 90-Day Dog Feeding Study
Long-Term Inhalation six months-lifetime)	Oral study NOAEL= 1.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE ≤ 100 (residential)	LOAEL = 8.9/10.4 mg/kg/day [M/F] based on changes in hematological and clinical chemistry parameters, and histopathology in bone marrow, liver, and kidney in the One Year Dog Feeding Study
Cancer (oral, dermal, inhalation)	NA	NA	Bifenazate is classified as not likely to be a human carcinogen

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.572) for the combined residues of bifenazate, and D3598 expressed as bifenazate (diazinecarboxylic acid, 2-(4-methoxy-1,1'-biphenyl]-3-yl), 1-methylethylester), in or on a variety of food commodities.

Risk assessments were conducted by EPA to assess dietary exposures from bifenazate in food as follows:

i. *Acute exposure.* An acute dietary reference dose (RfD) for the females 13–50 years of age and the general population, including infants and children, was not selected because an acute oral endpoint attributed to a single-dose exposure could not be identified in any of the studies in the toxicology data base, including

developmental and maternal toxicity in the developmental toxicity studies.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the 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 was made for the chronic exposure assessment: The chronic dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed crops excluding tomato where average field trial residues were used. DEEM (ver 7.73) default processing factors were assumed for all commodities excluding apple juice, grape juice, wine/sherry, tomato paste, and tomato puree. The processing factors for these commodities were reduced to 0.23, 0.17, 0.17, 5.0, and 5.0, respectively, based on data from processing studies.

In its objections to the earlier bifenazate tolerance action, NRDC claims that EPA relied upon unsupported and apparently arbitrary processing factors to reduce estimates of dietary exposure to bifenazate on apples and grapes. NRDC was incorrect to assert that the processing factors for apples and grapes were unsupported and arbitrary. The DEEM processing factors for apple juice and grape juice used for this action and the earlier bifenazate tolerance action are based on data from processing studies. In this action, the Agency used DEEM (ver 7.73) default processing factors when processing studies were not available. These default factors are worst case assumptions regarding pesticide partitioning into component commodity fractions. DEEM (ver 7.73) default processing factors assume that 100 percent of the pesticide that was originally present in the commodity is present in the processed fractions. This is a worst case theoretical concentration factor since it assumes that processing does not result in any reduction in pesticide content.

iii. *Cancer*. EPA has classified bifenazate as a not likely human carcinogen. Therefore, a quantitative cancer dietary exposure and risk assessment was not performed.

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

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow 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. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) 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 bifenazate they are further discussed in the aggregate risks in Unit III.E.

Parent bifenazate degrades rapidly in aerobic soil conditions with a half-life of approximately 30 minutes. The first degradate formed (D3598 (diazinecarboxylic acid, 2-(4-methoxy-1,1'- biphenyl-3-yl) (half-life of 7 hours)) was reported in a concentration of 95% of the applied radioactivity. D3598 degrades to D1989 (4-methylethylester) (reported at a maximum of 26% of the applied radioactivity), which is moderately persistent with an EPA-calculated half-life of approximately 96 days. Photodegradation and other routes of dissipation of parent bifenazate do not appear to be significant.

The Agency concluded that the residue of concern in drinking water is D1989. Parent and D3598 were not included as a residue of concern in drinking water due to the short half-lives of these compounds and the lack of an acute dietary endpoint (toxicity of D3598 is assumed to be equivalent to bifenazate). Since ground or surface water monitoring data to calculate a quantitative aggregate exposure are not available, EPA provided Tier I ground (SCI-GROW) and surface water (FIRST) EECs for D1989. Both models were conducted using the strawberry application scenario (one application at 0.75 lbs ai/acre; highest registered/proposed application rate). The resulting ground and surface water chronic EECs are < 0.001 ppb and 6.4 ppb, respectively.

In its objections to a separate bifenazate tolerance action, NRDC asserts that EPA failed to complete an assessment of drinking water exposure to bifenazate degradates. As stated in the **Federal Register** final rule of February 1, 2002, and restated in this document, EPA considered the environmental persistence of bifenazate and its two major metabolites D3598 and D1989. Aqueous photolysis and soil metabolism studies demonstrated that the parent bifenazate and the D3598 degradate quickly metabolize under aerobic soil conditions. Noting the lack of persistence of these two compounds and the absence of any acute dietary endpoint, EPA focused its drinking water exposure assessment for bifenazate on the degradate (D1989) that had a possibility of being present in drinking water. Accordingly, NRDC is incorrect to assert that potential exposure to bifenazate degredates in drinking water was not assessed by EPA.

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). In its objections to a separate bifenazate tolerance action, NRDC asserts that EPA failed to assess and incorporate residential uses as a source of aggregate exposure. In the current risk assessment, EPA calculated short-term residential risks to homeowner applicators.

However, the Agency concluded that no significant post-application exposure is aniticipated from landscape ornamentals; therefore, no residential post-application assessment was conducted.

Bifenazate is currently registered for use on the following residential non-dietary sites: Commercial application to ornamental plants (including bedding plants, flowering plants, foliage plants, bulb crops, perennials, trees and shrubs; not turf) and all fruit trees which will not bear fruit for a minimum of 12 months. The registrant has proposed an amendment to the Floramite (EPA Reg. No. 400–508) label to permit application to home ornamental plants and fruit trees that will not bear fruit within 12 months by residents/homeowners. The risk assessment was conducted using the following residential exposure assumptions: EPA anticipates only short-term dermal and short-term inhalation exposure for the residential handler (applicator). The proposed formulation is appropriate for application via pump up sprayers, garden hose-end sprayers or similar homeowner pesticide devices. A larger area per day may be treated with a hose-end sprayer than with a pump up compressed air sprayer, which in turn results in possibly greater contact with the active ingredient per day. Therefore, exposure from a hose-end sprayer is assessed rather than that of a compressed air sprayer. For the treatment of shrubs and ornamentals, EPA assume 100 gallons of finish spray are applied per day. The unit exposure value for a residential handler using open pour mixing/loading for a garden hose-end sprayer is 11 mg/lb handled (dermal) and 0.013 mg/lb handled (inhalation). Exposures were calculated using the Agency's draft Residential Standard Operating Procedures.

The highest label rate of application is 8 fl oz product/100 gal water.

2.0 lb ai/gal ÷ 128 fl oz/gal = 0.015625 lb ai/fl oz.

(8 fl oz/100 gal)(100 gal/day)(0.015625 lb ai/fl oz) = 0.125 lb ai/day

i. *Dermal Exposure Assessment and MOE.*

((11.0 mg ai/lb handled)(0.125 lb ai handled/day)) ÷ 70 kg bw = 0.019 mg/kg/day

MOE = NOAEL ÷ ADD = 80 mg/kg/day ÷ 0.019 mg/kg bw/day = 4,200

ii. *Inhalation Exposure Assessment and MOE.*

((0.013 mg ai/lb handled)(0.125 lb ai handled/day)) ÷ 70 kg bw = 0.0000232 mg/kg/day

MOE = NOAEL ÷ ADD = 10 mg/kg/day ÷ 0.0000232 mg/kg/day = 430,000

MOEs are combined for the dermal and inhalation routes of exposure since the short term toxicological effects are the same (reduced body weight gain and food consumption).

iii. *Combined MOE.*

combined MOE = $1 \div ((1 \div MOE_{dermal}) + (1 \div MOE_{inhalation}) = 4{,}200$

An MOE of 100 is adequate to protect a residential handler under the circumstances described. The estimated MOE is > 100 therefore this use is not of concern.

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

EPA does not have, at this time, available data to determine whether bifenazate 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 bifenazate and any other substances and bifenazate 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 bifenazate 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 margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no indication of qualitative or quantitative increased susceptibility of rats and rabbits during in utero exposure or post-natal exposure based on developmental toxicity and reproductive toxicity studies performed with bifenazate.

3. *Conclusion.* There is a complete toxicity data base for bifenazate 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 to 1X for the following reasons:

Acceptable developmental toxicity studies in the rat and the rabbit are available, as is an acceptable 2-generation reproduction study in the rat and there is no indication of qualitative or quantitative increased susceptibility of rats and rabbits to *in utero* or postnatal exposure. A developmental neurotoxicity study is not required for bifenazate. The dietary (food and water) and non-dietary (residential) exposure assessments are not expected to underestimate the potential exposures for infants and children from the use of bifenazate.

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 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. Bifenazate is not expected to pose an acute risk to humans.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenazate from food will utilize 24% of the cPAD for the U.S. population, 59% of the cPAD for all infants < 1 year old, 85% of the cPAD for children 1–2 years old (the most highly exposed population subgroup), and 17% of the cPAD for females 13–49 years old. Based on the use pattern, chronic residential exposure to residues of bifenazate is not expected. In addition, there is potential for chronic dietary exposure to bifenazate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENAZATE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.01	24	6.4	<0.001	260
All Infants (<1 year old)	0.01	59	6.4	<0.001	40
Children (1–2 years old)	0.01	85	6.4	<0.001	15
Females (13–49 years old)	0.01	17	6.4	<0.001	250

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). In its objections to a separate bifenazate tolerance action, NRDC claims that residential short- and intermediate-term risk assessments are data gaps for bifenazate. In the current risk assessment, EPA calculated short-term residential risks to homeowner applicators. However, the Agency concluded that no significant post-application exposure is aniticipated from landscape ornamentals; therefore, no residential post-application assessment was conducted. In addition, intermediate-term aggregate exposure (30 days to 6 months) is not expected since homeowner exposure is not expected to exceed 1 to 30 days.

Bifenazate is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenazate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 2,069 for the U.S. population; 2,418 for youth 13–19 years old; 2,429 for adults 20–49 years old; 2,467 for females 13–49 years old; and 2,377 for adults 50+ years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenazate in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BIFENAZATE

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	2,100	100	6.4	<0.001	3,300
Youth 13–19 years old	2,400	100	6.4	<0.001	2,900
Adults 20–49 years old	2,400	100	6.4	<0.001	3,400
Females 13–49 year old	2,500	100	6.4	<0.001	2,900
Adults 50+ years old	2,400	100	6.4	<0.001	3,400

4. *Aggregate cancer risk for U.S. population*. Bifenazate is classified as not likely to be a human carcinogen. The Agency concludes that bifenazate is not expected to pose a cancer risk to humans.

5. *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 bifenazate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Plant*. The enforcement method for plant tolerances associated with these petitions is method UCC–D2341, which uses high pressure liquid chromatography with an oxidative coulometric electrochemical detector.

2. *Livestock*. The enforcement method for animal products utilizes high pressure liquid chomatography with oxidative coulometric electrochemical detection.

3. *Multiresidue method*. Multiresidue Enforcement Method Protocol C has been shown to be adequate for enforcing these tolerances.

These methods 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 (MRLs) for residues of bifenazate in/on the proposed crops. Therefore, harmonization is not an issue.

V. Conclusion

Therefore, tolerances are established for combined residues of bifenazate, and diazinecarboxylic acid; 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on almond, hulls at 15 ppm; nut, tree, group 14 at 0.20 ppm; okra at 2.0 ppm; peppermint, tops at 25 ppm; pistachio at 0.20 ppm; spearmint, tops at 25 ppm; vegetable, cucurbit, group 9 at 0.75 ppm; and vegetable, fruiting, group 8 at 2.0 ppm, and combined residues of bifenazate; diazinecarboxylic acid, (expressed as bifenazate); 1,1'-biphenyl, 4-ol; and 1,1'-biphenyl, 4-oxysulfonic acid (expressed as 1,1'-biphenyl, 4-ol)] in [meat and meat byproducts of cattle, goat, hog, horse, and sheep at 0.02 ppm and milk at 0.02 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–2003–0297 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 November 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–2003–0297, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or

ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

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

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: September 15, 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 180.572 is amended:

i. In paragraph (a)(1) by revising the introductory text and alphabetically adding commodities to the table;

ii. By revising paragraph (a)(2); and

iii. In paragraph (b), by revising the introductory text and removing the commodities ''Hop'' and ''Pear'' from the table.

The amendments read as follows:

§ 180.572 Bifenazate; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on the following food commodities:

Commodity	Parts per million
Almond, hulls	15
* * *	* *
Nut, tree, group 14	0.20
Okra	2.0
* * *	* *
Peppermint, tops	25
Pistachio	0.20
* * *	* *
Spearmint, tops	25
* * *	* *
Vegetable, cucurbit, group 9.	0.75
Vegetable, fruiting, group 8.	2.0

(2) Tolerances are established for combined residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl) hydrazinecarboxylate); diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate); 1,1'-biphenyl, 4-ol; and 1,1'-biphenyl, 4-oxysulfonic acid (expressed as 1,1'-biphenyl, 4-ol) in or on the following food commodities:

Commodity	Parts per million
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Goat, meat	0.02
Goat, meat byproducts	0.02
Hog, meat	0.02
Hog, meat byproducts	0.02
Horse, meat	0.02
Horse, meat byproducts	0.02
Milk	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02

(b) *Section 18 emergency exemptions*. Time-limited tolerances are established for combined residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

* * * * *

[FR Doc. 03–24370 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0304]; FRL–7325–8]

Thiacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of thiacloprid ([3-[(6-chloro-3-pridinyl)methyl]-2-thiazolidinylidene]cyanamide) and metabolites retaining the thiazolidine ring intact, measured and expressed in terms of thiacloprid, *per se*, in or on apple, wet pomace; cotton, undelinted seed; cotton, gin by-products; fruit, pome group 11; fat, meat, liver, kidney and meat by-products of cattle, sheep, goat and horse; and milk. Bayer CropScience 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 September 26, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0304], must be received on or before November 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: Marilyn Mautz, Registration Division, 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: 703 305–6785; e-mail address: *mautz.marilyn@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–2003–0304. 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 May 7, 2003 (68 FR 24458) (FRL–7303–7), 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 a pesticide petition (PP 9F6060) by Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide, thiacloprid, in or on apple, wet pomace; cattle, meat and meat byproducts; cotton, gin byproducts; cotton, undelinted seed; fruit, pome, group 11; and milk at 0.6; 0.2; 11.0; 1.0; 0.3; and 0.1 parts per million (ppm), respectively. Upon review and evaluation of the data submitted in support of the petition, the Agency determined that the residues of concern are thiacloprid plus metabolites retaining the thiazolidine ring intact. Excluded from the residues of concern are metabolites such as 6-nicotinic acid (6-CNA) for which the thiazolidine ring is broken. These metabolites are excluded based on the finding that the toxic effects of thiacloprid are considered to be associated with the entire thiacloprid molecule (with both the thiazolidine ring and the chloropyridine ring intact). Because metabolism and degradation studies have shown that the thiazolidine ring is less stable than the chloropyridine ring, it is understood that metabolites retaining the thiazolidine ring also retain the chloropyridine ring intact. Metabolites retaining the thiazolidine ring generally constitute most of the residue in foods and feeds. The petition was subsequently revised to:

1. Request that 40 CFR part 180 be amended by establishing tolerances for the insecticide thiacloprid in or on the commodities: Meat, meat byproducts, liver, fat, and kidney of sheep, goat and horse; liver; fat and kidney of cattle; and

2. Lowering the previously proposed tolerance levels for the food commodities, cattle, meat from 0.2 ppm to 0.03 ppm; cattle, meat byproducts from 0.2 ppm to 0.05 ppm; cotton, undelinted seed from 1.0 ppm to 0.02 ppm and milk from 0.1 ppm to 0.03 ppm based on measurement of thiacloprid per se rather than measurement of the common moiety, 6-nicotinic acid (6-CNA) upon which the original proposed tolerances were based; as summarized in Table 1 of this unit.

TABLE 1—PROPOSED TOLERANCE LEVELS FOR FOOD COMMODITIES.

Commodity	Original, Measured as 6-CNA (ppm)	Revised, Measured as Thiacloprid (ppm)
Apple, wet pomace	0.6	0.6
Cattle, meat	0.2	0.03
Cattle, meat byproducts	0.2	0.05
Cotton, gin byproducts	11.0	11.0
Cotton, undelinted seed	1.0	0.02
Cattle, sheep, goat and horse fat		0.02
Cattle, sheep, goat and horse kidney		0.05
Cattle, sheep, goat and horse liver		0.15
Fruit, pome, group 11	0.3	0.3
Milk	0.1	0.03
Sheep, goat and horse meat		0.03
Sheep, goat and horse meat byproducts		0.05

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 thiacloprid and metabolites

retaining the thiazolidine ring intact, measured and expressed in terms of thiacloprid, *per se* on apple, wet pomace; cattle, sheep, goat and horse meat; meat byproducts; liver; kidney; and fat; cotton, undelinted seed; cotton, gin byproducts; fruit, pome, group 11; and milk at 0.6; 0.03; 0.05; 0.15; 0.05; 0.02; 0.02; 11.0; 0.3; and 0.03 ppm, respectively. 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 thiacloprid 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	NOAEL = rats: males, 7.3 mg/kg/day ; females, 7.6 mg/kg/day; mice, females, 27.3 mg/kg/day ; males 102.6 milligram/kilogram/day (mg/kg/day) LOAEL = rats: males,28.6 mg/kg/day; females, 35.6 mg/kg/day; mice: females, 27.2 mg/kg/day; males, 542.4 mg/kg/day based on rats: decreased body weight throughout treatment: mice: females based on adrenal X-zone changes. males based on liver effects (weight and hypertrophy).
870.3150	90-Day oral toxicity in nonrodents	NOAEL = males. 8.5, females, 8.9 mg/kg/day LOAEL = ~34.9 mg/kg/day based on mainly liver enzyme changes, thyroid hormone level (T4) and binding capacity changes and prostatic weight change and prostatic hypertrophy.
870.3200	21/28-Day dermal toxicity	NOAEL = females, 300 mg/kg/day LOAEL = 1,000 mg/kg/day based on liver and thyroid effects and clinical signs.
870.3465	28 Day inhalation toxicity	NOAEL = 0.542 mg/kg/day LOAEL = 4.93 mg/kg/day based on [liver effects (hypertrophy and increased N-DEM).
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 50 mg/kg/day based on decreased body weights, body weight gains, food consumption, increased urination, and changes in water consumption. Developmental NOAEL = 10 mg/kg/day LOAEL = 50 mg/kg/day based on increased resorptions (complete and late), skeletal retardations, variations (wavy ribs and asymmetrical sternebrae), and malformations (dysplastic humerus, radius, and scapulae) and on decreased fetal weights
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 2 mg/kg/day LOAEL = 10 mg/kg/day based on decreased body weight gains, food consumption, and fecal output. Developmental NOAEL = 2 mg/kg/day LOAEL = 10 mg/kg/day based on decreased fetal weights
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = males, 3.5 mg/kg/day LOAEL = 21 mg/kg/day based on increased liver and thyroid weights and on hepatocytomegaly, liver necrosis, and thyroid follicular cell hypertrophy. Reproductive NOAEL = females, 4 .2 mg/kg/day LOAEL = 26 mg/kg/day based on dystocia Offspring NOAEL = females, 4.2 mg/kg/day LOAEL = females, 21 mg/kg/day based on decreased pup weight during lactation.
870.4100	Chronic toxicity dogs	No firm LOAEL was established for this chronic feeding study with dogs; 1,000 ppm highest dose tested (HDT). There were no effects that were of sufficient magnitude or consistency to justify that they were definite responses to treatment. Certain effects noted in the subchronic dog study on the prostate and other male organs and an apparent effect on uterine weight in the subchronic dog study were not seen in this chronic study. This may be because the dogs in this study had reached maturity
870.4300	Combined chronic feeding/cacinogenicity rats	NOAEL = males, 1.2 mg/kg/day ; females, 1.6 mg/kg/day LOAEL = males, 2.5 mg/kg/day; females, 3.3 mg/kg/day based on [liver toxicity (hepatocellular hypertrophy and cytoplasmic change and increased enzyme activity), thyroid follicular epithelial hypertrophy in males and oculotoxicity (retinal atrophy) in females Evidence of carcinogenicity based on increased incidence of thyroid follicular cell adenomas in males and possibly also in females and increased incidence of uterine tumors (adenocarcinomas)

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4200	Carcinogenicity mice	NOAEL = males,5.7 mg/kg/day; females: 10.9 mg/kg/day LOAEL = males, 234.1mg/kg/day; females, 475.3 mg/kg/day based on liver toxicity and microscopic lymph node changes in both sexes and increased X-zone vacuolization of the adrenal glands in female mice Evidence of carcinogenicity based on increased incidence of ovarian luteomas
870.5100	Gene Mutation	Negative in a battery of tests
870.5300	Gene Mutation	Negative in a battery of tests
870.5375	Cytogenetics	Negative in battery of tests
870.5395	Cytogenetics	Negative in battery of tests
870.5500	Cytogenetics	Negative in battery of tests
870.5550	Other Effects	Negative
870.6200	Acute neurotoxicity screening battery	NOAEL = males, 11 mg/kg bodyweight (bw); females, 3.1 mg/kg/day LOAEL = males, 22 mg/kg bw; females, 11 mg/kg/day In females, based on reductions in motor and locomotor activity.; in males, (based on FOB observations of slight tremors and ptosis of the eyelids on the day of treatment)
870.6200	Subchronic neurotoxicity screening battery	NOAEL = males , 24.2 mg/kg/day; females, 27.9 mg/kg/day LOAEL = males, 101 mg/kg/day; females, 115 mg/kg/day based on decreased body weight gains and food consumption in both sexes and decreased hindlimb grip strength in males.
870.6300	Developmental neurotoxicity	Maternal NOAEL = 4.4 mg/kg/day LOAEL = 25.6 mg/kg/day based on decreased body weight gain and food consumption during early gestation (gestation day (GD) 0-6. Offspring NOAEL = Tentative Offspring , 4.4 mg/kg/day LOAEL = Tentative Offspring, 25.6 mg/kg/day based on decreased pre-weaning and post-weaning body weights in both sexes and delayed sexual maturation in the males, and altered performance in passive avoidance testing.
870.7485	Metabolism and pharmacokinetics	Thiacloprid is rapidly absorbed and is rapidly excreted after the following metabolic processes, with little remaining in the tissues. The metabolic processes were summarized as: 1. Hyroxylation of the thiazolidine ring and subsequent glucuronidation (as shown by metabolite PIZ 1270), 2. Hydroxylation of the cyanamide moiety (metabolite KNO 1891), 3. Opening of the thiazolidine ring (e.g., metabolites KNO2672, PIZ1297F/WAK 6935), 4. Formation of an oxazole ring (metabolite PIZ 1253), 5. Oxidation and subsequent methylation of the thiazolidine ring (e.g., PIZ 1297E and PIZ 1269X), and 6. Oxidative cleavage of the methylene bridge (PIZ 1243). Only minor gender-related quantitative differences in metabolite profiles were observed.
870.7600	Dermal penetration	A 5% dermal absorption value is appropriate for estimating the risk resulting from dermal exposure to Thiacloprid formulated as a 40.4% liquid formulation (SC 480). This 5% value is also appropriate for other liquid thiacloprid formulations that are similar to the SC 480 liquid formulation product tested and for aqueous dilutions of most thiacloprid formulations.

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 intra species differences. As explained in Unit III.D.3., EPA determined that the FQPA SF be reduced to 3X.

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 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 thiacloprid used for human risk assessment is shown in Table 3 of this unit:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIACLOPRID 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 (All population groups)	NOAEL = 3.1 mg/kg UF = 300* Acute RfD = 0.01 mg/kg.	Special FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.01 mg/kg	Acute Neurotoxicity - rats LOAEL = 11 mg/kg/day based on decreased motor activity in females.
Chronic Dietary (All populations)	NOAEL= 1.2 mg/kg/day UF = 300* Chronic RfD = 0.004 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.004 mg/kg/day	Chronic feeding in rats. LOAEL = 2.5 mg/kg/day based on hepatic hypertrophy and cytoplasmic change and thyroid hypertrophy and retinal degeneration.
Cancer (Oral, dermal, inhalation)	Q_1* $(mg/kg/day)^{-1}$ = 4.06 x 10^{-2}	Classified as a likely human carcinogen based on thyroid tumors and uterine tumors in rats and ovary tumors in mice	

UF = uncertainty factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose

* 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*. There are no tolerances established for residues of thiacloprid. Risk assessments were conducted by EPA to assess dietary exposures from thiacloprid 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 exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A moderately refined, Tier 3 acute dietary exposure assessment, which incorporated field trial data, estimates of % market share, and empirical processing factors, was conducted for the general U.S. population and various population subgroups. Monitoring data are not available for thiacloprid as it is a new chemical. EPA estimated exposure at the 99.9th exposure percentile.

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 partially refined, Tier 3 chronic dietary exposure assessment, which incorporated field trial data, empirical processing factors, and projected percent crop treated estimates, was conducted for the general U.S. population and various population subgroups. Monitoring data are not available for thiacloprid as it is a new chemical.

iii. *Cancer*. A cancer assessment was performed using the same assumptions as the chronic assessment in Unit III.C.1. ii. The cancer dietary exposure estimate for the general U.S. population is 1.3×10^{-6}.

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 for both the acute and chronic dietary risk assessment as follows:

A routine acute and chronic dietary exposure analysis for thiacloprid was based on 61% of apple crop treated, 51% of pear crop treated and 1% of cotton crop treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described in the preceding paragraph for thiacloprid used on these crops is reliable and has a valid basis. The PCT estimates are based on use of existing alternate insecticides against insects that thiacloprid will control. As per Agency practice, the PCT estimates are what the Agency expects to be likely upper bound market penetrations for various crop/pest niches. Maximal percent crop treated estimates were projected for apples, pears, and cotton. 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 thiacloprid 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 thiacloprid 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 thiacloprid.

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.

The Tier II screening model, PRZM/EXAMS, was used to estimate residues of thiacloprid and one of its major degradates, YRC 2984 amide in surface water. The SCI-GROW model was used to estimate the ground water residues.

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 thiacloprid they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of thiacloprid and one of its major degratates, YRC 2894 amide for acute exposures are estimated to be 10.2 parts per billion (ppb) for surface water and 0.06 ppb for ground water. The EECs for chronic exposures are estimated to be 2.36 ppb for surface water and 0.06 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).

Thiacloprid is not registered or proposed for use on any sites that would result in residential exposure.

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

EPA does not have, at this time, available data to determine whether thiacloprid 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 thiacloprid and any other substances and thiacloprid does not appear to produce a toxic metabolite produced by other substances. Thiacloprid does produce 6-CNA, a metabolite also produced by another registered chloronicotinoid pesticide. However, the limiting toxic endpoints used in this assessment for thiacloprid are not based upon the toxicity of 6-CNA. For the purposes of this tolerance action, therefore, EPA has not assumed that thiacloprid 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 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*. Developmental studies did not show either qualitative or quantitative susceptibility. There is no increase in quantitative susceptibility demonstrated in the rat developmental neurotoxicity, rabbit developmental or rat reproduction studies. There is an apparent qualitative increase in susceptibility in the rat developmental toxicity study as indicated by increases in resorptions, increases in skeletal variations and retardations and malformations, and decreases in fetal body weight that occurred at the same dose showing a decrease in maternal body weight, but the concern is low since:

i. There is a well characterized dose response with a clear NOAEL and LOAEL;

ii. The fetal effects were noted in the presence of maternal toxicity; and

iii. There are no residual uncertainties.

3. *Conclusion*. In evaluating whether to retain the 10X SF to protect infants and children or to select a different safety factor, EPA considered the following factors:

i. There are no special concerns regarding pre- or post-natal toxicity exposure;

ii. The exposure databases (food and drinking water) are complete and/or employ conservative assumptions;

iii. There is no residential exposure;

iv. The risk assessments cover or approximate all the metabolites and degradates of concern;

v. The assessments do not underestimate the potential risk for infants and children; and

vi. The toxicity database is complete except that there is a lack of morphometric assessments for the low- and mid-dose group animals in the developmental neurotoxicity study (DNT).

Although the lack of morphometric assessments in the DNT raised some uncertainty, EPA determined that there were sufficient reliable data to select an additional safety factor of 3X instead of 10X. The FQPA safety factor of 3X is in the form of a database uncertainty factor of 3X. A 3X factor was judged to be adequate because the dose selected for overall risk assessments is already based on the most sensitive end points for acute (i.e. clinical signs indicative of neurotoxicity) and chronic (i.e. liver and thyroid effects) dietary and non-dietary exposure scenarios, and the available data indicate that the full characterization of brain morphometrics from the DNT study would not be expected to lower the dose used for risk assessments by more than 3-fold.

To elaborate, since the magnitude (4-14%) of the morphometric histopathology changes seen in the offspring at the highest dose (40.8 mg/kg/day) in the developmental neurotoxicity study were considered to be at or near the limit of detection for differences in morphometric measurements, it is unlikely that measurable morphometric changes will be seen at lower doses. Any possible slight effects at lower doses are highly unlikely to change the regulatory level. The actual doses used to establish the acute RfD (3.1 mg/kg/day) and the chronic RfD (1.2 mg/kg/day) are 13 and 34 fold lower, respectively, than the 40.8 mg/kg/day dose where the effects of minimal magnitude were seen. Applying the 3 X factor further renders the adjusted doses 39 and 102-fold lower than the dose level where the effects of minimal magnitude were seen. Morever, even if the slight morphometric changes are seen at the mid, and even the low, dose of the DNT, a RfD calculated on such findings is highly unlikely to be lower than current acute and chronic RfDs adjusted by 3X given that the effects seen at the high dose were marginal. Therefore it is concluded that 3X is adequate to account for any possible morphometric effects that may be noted in the lower doses for which the additional readings are being sought.

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 thiacloprid will occupy 20% of the aPAD for the U.S. population, 8.5 % of the aPAD for females 13 years and older, 51 % of the aPAD for all infants and 47 % of the aPAD for children 1-2 years old. In addition, there is potential for acute dietary exposure to thiacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO THIACLOPRID

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U.S. population	0.01	20	10.2	0.06	281
All infants < 1 year old	0.01	51	10.2	0.06	49
Children 1-2 years old	0.01	47	10.2	0.06	53
Children 3-5 years old	0.01	33	10.2	0.06	67
Females 13-49 years old	0.01	8.5	10.2	0.06	274

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to thiacloprid from food will utilize <1.0 % of the cPAD for the U.S. population, 4.4 % of the cPAD for all infants and 4.2% of the cPAD for children 1-2 years old . There are no residential uses for thiacloprid that result in chronic residential exposure to thiacloprid. In addition, there is potential for chronic dietary exposure to thiacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 5 of this unit:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.004	<1.0	2.36	0.06	139
All Infants < 1 year old	0.004	4.4	2.36	0.06	38
Children 1-2 years old	0.004	4.2	2.36	0.06	38
Children 3-5 years old	0.004	2.9	2.36	0.06	38
Children 6-12 years old	0.004	1.3	2.36	0.06	39
Females 13-49 years old	0.004	<1.0	2.36	0.06	120

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).

Thiacloprid is not registered or proposed 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).

Thiacloprid is not registered or proposed 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*. In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment: (July 1999), thiacloprid was classified into the category Likely to be Carcinogenic to Humans. A linear low-dose extrapolation approach is applied to the quantifications of risk to be estimated, based upon male rat thyroid, rat uterine, and mouse ovarian tumors. The data did not support a mode of action. The Q1* is 4.06×10^{-2} in human equivalents based on the rat uterine adenoma, adenocarcinoma and/or adenosquamous carcinoma combined tumor rates.

The dietary cancer risk from residues in food is $1.3X\ 10^{-6}$. A cancer DWLOC is calculated only for the general U.S. Population. For this population the calculated DWLOC of 1.5ug/L is the same as the calculated EEC of 1.5 ug/L.

DWLOC = $3\ X\ 10^{-6}/Q_1$* - average food exposure (mg/kg/day)]*bwt* 1,000 ug/mg÷Water consumption (liter/day)

DWLOC (US Pop.) = 1.5 ug/L. Since the surface water EEC for cancer is 1.5 ug/L the risk cup is exactly filled to $3\ X\ 10^{-6}$.

For risk management purposes, EPA considers a cancer risk to be greater than negligible when it exceeds the range of 1 in 1 million. EPA has generally treated cancer risks up to 3 in 1 million as within the range of 1 in 1 million.

EPA believes that the lifetime exposure will be result in negligible cancer risk for the following reason:

The cancer risk from the food uses alone is 1.3×10^{-6}.The dietary risk is based on residue data derived from the average of field trials. It is not unusual in the Agency's experience for field trial data to be an order of magnitude above actual monitoring. Since thiacloprid is a new chemical, actual monitoring data are not yet available. It is likely that the actual risk contribution from food will be much lower than current data indicate, which would result in a larger DWLOCcancer.

Thus, EPA does not expect that the general population would be exposed to levels that would exceed a neglible cancer risk over a lifetime.

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 thiacloprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner proposed a high performance liquid chromatography mass spectrometry (HPLC/MS/MS) method for determining thiacloprid, YRC-2894 amide and 4-hydroxy-YRC2894 amide in plants which has been found to be appropriate for use in the enforcement of the plant tolerances associated with this petition. The available radiovalidation and metabolism data supports this method. An adequate Independent Lab Validation (ILV) has been provided for the method and adequate confirmatory ions were also identified in the ILV.

The petitioner has proposed a HPLC/MS/MS method for determining thiacloprid in livestock tissues which has been found to be appropriate for use in the enforcement of the animal tissue tolerances associated with this petition. Existing radiovalidation and metabolism data supports this method as well as does an ILV. Mass spectrometry provides an adequate confirmatory method. This conclusion is based upon the successful use of mass spectrometry as a confirmatory method for thiacloprid in plants, the similarity between the HPLC/MS/MS methods for thiacloprid in plants and animals, and the Agency's familiarity with mass spectrometry in general. As a condition of registration, the registrant will be required to submit a description of the procedures for the use of mass spectrometry for thiacloprid in animals.

Thiacloprid, parent only, has been tested through the FDA PAM I multi-residue protocol. Upon request, the methods will be available prior to the harvest 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 established Codex, Canadian or Mexican maximum residue limits (MRLs) for thiacloprid.

C. Conditions

The following information must be submitted as a condition for product registrations related to these tolerances: The registrant will be required to submit a description of the procedures for the use of mass spectrometry for thiacloprid in animals.

V. Conclusion

Therefore, tolerances are established for combined residues of thiacloprid and metabolites retaining the thiazolidine ring intact, measured and expressed as thiacloprid, *per se*, in or on apple, wet pomace at 0.6 ppm; cattle, sheep, goat, and horse meat at 0.03 ppm; cattle, sheep, goat and horse meat byproducts at 0.05 ppm; cattle, sheep, goat, and horse liver at 0.15 ppm; cattle, sheep, goat, and horse kidney at 0.05 ppm; and cattle sheep, goat, and horse fat at 0.02 ppm; cotton, undelinted seed at 0.02 ppm; cotton, gin byproducts at 11.0 ppm; fruit, pome, group 11 at 0.3 ppm; and milk at 0.03 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–2003–0304 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 November 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–2003–0304, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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: September 16, 2003.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.594 is added to read as follows:

§ 180.594 Thiacloprid; tolerances for residues.

(a) *General.* Tolerances for combined residues of the insecticide thiacloprid

([3-[(6-chloro-3-pyridinyl)methyl]-2-thiazolidinylidene] cyanamide) and metabolites retaining the thiazolidine ring intact, measured and expressed in terms of thiacloprid, *per se*, in or on the following commodities:

Commodity	Parts per million
Apple, wet pomace	0.60
Cattle, fat	0.020
Cattle, kidney	0.050
Cattle, liver	0.15
Cattle, meat	0.030
Cattle, meat by-products	0.050
Cotton, gin byproducts	11.0
Cotton, undelinted seed	0.020
Fruit, pome, group 11	0.30
Goat, fat	0.020
Goat, kidney	0.050
Goat, liver	0.15
Goat, meat	0.030
Goat, meat byproducts	0.050
Horse, fat	0.020
Horse, kidney	0.050
Horse, liver	0.15
Horse, meat	0.030
Horse, meat by-products	0.050
Milk	0.030
Sheep, fat	0.020
Sheep, kidney	0.050
Sheep, liver	0.15
Sheep, meat	0.030
Sheep, meat by-products	0.050

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

[FR Doc. 03–24371 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0301; FRL–7326–7]

Fenhexamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenhexamid in or on cucumber; fruit, stone, group 12, except plum, prune, fresh, postharvest; kiwifruit, postharvest; leafy greens subgroup 4A, except spinach; plum, prune, dried; plum, prune, fresh; vegetable, fruiting, group 8, except nonbell pepper. 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). EPA is also deleting certain fenhexamid tolerances that are no longer needed as a result of this action.

DATES: This regulation is effective September 26, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0301, must be received on or before November 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: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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–2003–0301. 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 May 21, 2003 (68 FR 27799) (FRL–7308–4), 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 a pesticide petition (PP 2E6463, 2E6496, 3E6532, and 3E6541) by IR–4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.553 be amended by establishing tolerances for residues of the fungicide

fenhexamid, *N*-(2,3-dichloro-4-hydroxyphenyl)-1-methyl-cyclohexane carboxamide, in or on food commodities as follows: cucumber at 2.0 parts per million (ppm) (PP 2E6496); fruit, stone, group 12, postharvest at 10.0 ppm (PP 3E6541); kiwifruit, postharvest at 15.0 ppm (PP 2E6463); leafy greens, subgroup 4A, except spinach at 30.0 ppm (PP 3E6532); vegetable, fruiting, group 8, at 2.0 ppm (PP2E6496). IR–4 subsequently amended PP 3E6541 to propose tolerances for fruit, stone, group 12, except plum, prune, fresh, postharvest at 10.0 ppm and separate tolerances for plum, prune, dried at 2.5 ppm and plum, prune, fresh at 1.5 ppm. IR–4 also amended PP 2E6496 to propose tolerances for vegetable, fruiting, group 8, except nonbell pepper at 2.0 ppm. EPA is deleting the established fenhexamid tolerance for fruit, stone, except plum, prune, fresh at 6.0 ppm. This tolerance is no longer needed since this action establishes a higher tolerance at 10.0 ppm to cover both pre- and postharvest application to stone fruit, except plum, prune, fresh.

EPA has received objections to tolerances it established for residues of fenhexamid on a variety of berry crops and pistachio (67 FR 19114) (FRL–6829–9). 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. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has initiated a public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7), which ended on October 16, 2002. Although that proceeding remains ongoing, prior to acting on this current tolerance action, EPA reviewed the fenhexamid-specific objections raised by NRDC and has addressed them at relevant points throughout this preamble.

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 residues of fenhexamid on cucumber at 2.0 ppm; fruit, stone, group 12, except plum, prune, fresh, postharvest at 10.0 ppm; kiwifruit, postharvest at 15.0 ppm; leafy greens subgroup 4A, except spinach at 30.0 ppm; plum, prune, dried at 2.5 ppm; plum, prune, fresh at 1.5 ppm; vegetable, fruiting, group 8, except nonbell pepper at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenhexamid are discussed in Unit II.A. of the final rule on Fenhexamid; Pesticide Tolerance published in the **Federal Register** of April 13, 2000 (65 FR 19842) (FRL–6553–7).

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 intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety 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 fenhexamid used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENHEXAMID 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)	None UF = NA Acute RfD = None	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = None	Not selected. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies.
Chronic Dietary (All populations)	NOAEL = 17 mg ai/kg/day UF = 100 Chronic RfD = 0.17 mg/kg/day	1X cPAD = chronic RfD ÷ FQPA SF = 0.17 mg/kg/day	1-Year Feeding-Dog. Decreased RBC count, hemoglobin and hematocrit and increased Heinz bodies in males and females; increased adrenal weights and intracytoplasmic vacuoles in adrenal cortex in females at the LOAEL of 124 mg/kg/day.
Short-Term (1–30 days) and Intermediate-Term (1–6 months) Dermal	NOAEL = 1,000 mg ai/kg/day Dermal absorption rate = 20%	Residential MOE = Not applicable	21-Day Dermal-Rabbit. In the developmental toxicity study in rabbits, decreased body weight gain and food consumption at LOAEL of 1,500 mg/kg/day (dermal equivalent dose using 20% dermal absorption factor); NOAEL was 500 mg/kg/day (dermal equivalent dose). Dermal exposure is not expected since there are no residential uses.
Long-Term Dermal (> 6 months)	None Dermal absorption rate = 20%	Residential MOE = Not applicable	Not selected. Long-term dermal exposure is not expected since there are no residential uses.
Short-Term (1–30 days), Intermediate-Term (1–6 months), and Long-term (> 6 months) Inhalation	None	Residential MOE = Not applicable	Not selected. Inhalation exposure is not expected since there are no residential uses.
Cancer (oral, dermal, inhalation)	None	Not applicable	Fenhexamid is classified as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in mice and rats and the lack of genotoxicity in a battery of mutagenicity studies.

* 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 180.553) for the residues of fenhexamid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid 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. An acute risk assessment was not performed. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. An unrefined, Tier 1 chronic dietary exposure assessment was performed using tolerance level residues (established and recommended) and 100% crop treated. DEEM™ default processing/concentration factors were used for all processed commodities.

iii. *Cancer.* Fenhexamid has been classified as a ''not likely'' human carcinogen. Therefore, a quantitative cancer dietary exposure assessment was not performed.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenhexamid 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 fenhexamid.

2. *Dietary exposure from drinking water.* The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow 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. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of

pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a 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 fenhexamid they are further discussed in the aggregate risk sections in Unit III.E.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of fenhexamid for acute and chronic surface water exposures are estimated to be 28.7 parts per billion (ppb) and 1.14 ppb, respectively. The EECs for acute and chronic ground water exposure is estimated to be 0.0007 ppb.

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

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

EPA does not have, at this time, available data to determine whether fenhexamid 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 fenhexamid and any other substances and fenhexamid 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 fenhexamid 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 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*. In the rat and the rabbit developmental toxicity studies, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to fenhexamid was observed. In the rat reproduction study, qualitative susceptibility was evidenced as significantly decreased pup body weights in both generations during the lactation period (on lactation days 7, 14, and 21 in the F_2 generation and lactation days 14 and 21 in the F_1 generation offspring) in the presence of lesser maternal toxicity (alterations in clinical chemistry parameters and decreased organ weights without collaborative histopathology). Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for fenhexamid, the degree of concern for the effects observed in this study was characterized as low, noting that there is a clear NOAEL and well-characterized dose response for the offspring effects observed and that these effects occurred in the presence of parental toxicity. No residual uncertainties were identified. The NOAEL of 17 mg/kg/day from the chronic dog study used to establish the chronic Reference Dose (cRfD) for the General Population (no aRfD was established for any population subgroup) is lower than the NOAEL of 38.2 mg/kg/day in the reproduction study in which the offspring effects of concern were observed (LOAEL = 406 mg/kg/day).

3. *Conclusion*. There is a complete toxicity data base for fenhexamid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X Safety Factor to protect infants and children should be reduced to 1X for the following reasons:

- There are no residual uncertainties for pre and/or post natal toxicities via the oral route since the doses selected for overall risk assessments would address the concerns for the developmental and offspring toxicities seen in the above mentioned studies.
- There are no residual uncertainties for pre and/or post natal toxicities via the dermal route since the dose/endpoint/study/species of concern was used for dermal-risk assessment.
- The toxicology data base is complete.
- Developmental neurotoxicity studies are not required for fenhexamid based on the following weight-of-the-evidence considerations:
  - Lack of evidence of abnormalities in the development of the fetal nervous system in the pre/post-natal studies.
  - Neither brain weight nor histopathological examination of the nervous system was affected in the subchronic and chronic studies.
  - Decreased body temperatures observed in male rats in the acute neurotoxicity study were not considered to be toxicologically significant.
- The dietary (food) exposure assessment utilizes existing and proposed tolerance level residues and assumes 100% of crops treated with fenhexamid. The assessment is based on reliable data and is not expected to underestimate exposure/risk.
- Conservative assumptions are used in the drinking water models. The drinking water exposure assessment is not expected to underestimate exposure/risk.
- Fenhexamid is not registered for use sites that would result in residential exposure.

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*. An acute risk assessment was not performed. No toxicological endpoint attributable to a single (acute) dietary exposure was identified. Therefore, acute risk from exposure to fenhexamid is not expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenhexamid from food will utilize 9.9 % of the cPAD for the U.S. population, 19.6 % of the cPAD for all infants < 1 year, 21.8% of the cPAD for children 1 to 2 years, the population subgroup at greatest exposure, and 8.8% of the cPAD for females 13 to 50 years old. There are no residential uses for fenhexamid that result in chronic residential exposure to fenhexamid. However, there is potential for chronic dietary exposure to fenhexamid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FENHEXAMID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.17	9.9	1.14	0.0007	5,363
All infants < 1 year	0.17	19.6	1.14	0.0007	1,367
Children 1 to 2 years	0.17	21.8	1.14	0.0007	1,330
Females 13–50 years	0.17	8.8	1.14	0.0007	4,980

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). In its objections to a separate fenhexamid tolerance action, NRDC claims that residential short-term and intermediate-term risk assessments are data gaps for fenhexamid. EPA did not conduct short-term and intermediate-term risk assessments for fenhexamid since the pesticide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of risk from chronic exposure to residues in food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. EPA has classified fenhexamid as a ''not likely'' human carcinogen. The Agency concludes that pesticidal uses of fenhexamid do not pose a cancer risk to humans.

5. *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 fenhexamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Bayer AG Method 00362 has previously undergone a successful method trial and method validation, and is the enforcement method for all the fenhexamid established tolerances. 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*.

V. Conclusion

Therefore, the tolerance is established for residues of fenhexamid, *N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide, in or on cucumber at 2.0 ppm; fruit, stone, group 12, except plume, prune, fresh, postharvest at 10.0 ppm; kiwifruit, postharvest at 15.0 ppm; leafy greens subgroup 4A, except spinach at 30.0 ppm; plum, prune, dried at 2.5 ppm; plum, prune, fresh at 1.5 ppm; vegetable, fruiting group 8, except nonbell pepper at 2.0 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–2003–0301 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 November 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–2003–0301, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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: September 10, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.553 is amended as follows:

a. By revising the commodities plum, prune, dried and plum, prune, fresh in the table in paragraph (a).

b. By removing the commodity fruit, stone, except plum, prune, fresh in the table in paragraph (a).

c. By alphabetically adding commodities in the table in paragraph (a).

§ 180.553 Fenhexamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Cucumber	2.0
Fruit, stone, group 12, except plum, prune, fresh, postharvest	10.0
* * *	* *
Kiwifruit, postharvest	15.0
* * *	* *
Leafy greens, subgroup 4A, except spinach	30.0
* * *	* *
Plum, prune, dried	2.5
Plum, prune, fresh	1.5
* * *	* *
Vegetable, fruiting, group 8, except nonbell pepper	2.0

* * * * *

[FR Doc. 03–24013 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0146; FRL–7320–8]

Chlorfenapyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of chlorfenapyr [4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile] in or on vegetables, fruiting, group 8. BASF Agro Research, now BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 26, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0146, must be received on or before November 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: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address: *sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you grow fruiting vegetables in commercial greenhouses, consume vegetables that were raised in commercial greenhouses, or provide pest control services to commercial greenhouses. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Pesticide manufacturing (NAICS 32532)
- Other food crops grown under cover (NAICS 111419)
- Entomological services, agricultural; insect control for crops (NAICS 115112)
- Agricultural production or harvesting crews (NAICS 115115)

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–2003–0146. 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 September 13, 2000 (65 FR 55236) (FRL–6742–3), 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 an amended pesticide petition (PP 6F4716) by BASF Agro Research, now BASF Corporation, P.O. Box 400, Princeton, NJ 08543–0400, now P.O. Box 13528, Research Triangle Park, NC 27709–3528. (The original pesticide petition PP 6F4716 was filed by American Cyanamid (now BASF Agro Research) in 1996). The 2000 notice included a summary of the petition prepared by BASF Agro Research, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.513 be amended by establishing a tolerance for residues of the insecticide chlorfenapyr, [4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile], in or on vegetables, fruiting, group 8 at 1.0 parts per million (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 (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of chlorfenapyr on vegetables, fruiting, group 8 at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	MRID No. (year)/Classification/Doses	Results
870.3100	90–Day oral toxicity rats	42770219 (1993) Acceptable/guideline 0, 150, 300, 600, 900, 1,200 ppm 0, 11.7, 24.1, 48.4, 72.5, 94.5 mg/kg/day	NOAEL = 24.1 mg/kg/day LOAEL = 48.4, based on spongiform myelopathy in the brain and spinal cord of male rats, decreased body weight gain and increased relative liver weight in males and females, increased absolute liver weight in females, and decreased hemoglobin in females
870.3100	90–Day oral toxicity mouse	43492830 (1994) Acceptable/guideline 0, 40, 80, 160, 320 M: 0, 7.1, 14.8, 27.6, 62.6 mg/kg/day F: 0, 9.2, 19.3, 40, 78 mg/kg/day	NOAEL = 27.6/40, M/F LOAEL = 62.6/78, M/F, based on reduced body weights/body weight gains, and spongiform encephalopathy in both sexes
870.3150	90–Day oral toxicity dog	42770220 (1993) Acceptable/guideline 0, 60, 120,≈247* ppm M: 0, 2.1, 3.9, 6.7 mg/kg/day F: 0, 2.2, 4.5, 6.8 mg/kg/day *High dose animals received 300 ppm during days 1–15, 240 ppm during days 15–25, and 200 ppm during days 25–93	NOAEL = 3.9/4.5 mg/kg/day, M/F LOAEL = 6.7/6.8 mg/kg/day, M/F, based on emaciation, decreased body weight gains, and decreased food efficiency
870.3200	21/28–Day dermal toxicity rabbit	43492831 (1993) Unacceptable/guideline due to incomplete histopathological examination 0, 100, 400, 1,000 mg/kg/day	NOAEL = 100 mg/kg/day LOAEL = 400 mg/kg/day, for both sexes, based on changes in liver chemistry and morphology
870.3700	Prenatal developmental rat	42884202 (1993) Acceptable/guideline 0, 25, 75, 225 mg/kg/day	Maternal NOAEL = 25 mg/kg/day Maternal LOAEL = 75 mg/kg/day, based on decreased body weight gain and relative food consumption during treatment Developmental NOAEL ≥225 mg/kg/day Developmental LOAEL = not identified
870.3700	Prenatal developmental rabbit	42770222 (1993) Acceptable/guideline 0, 5, 15, 30 mg/kg/day	Maternal NOAEL = 5 mg/kg/day Maternal LOAEL = 15 mg/kg/day, based on decreased body weight gain during treatment Developmental NOAEL = 15 mg/kg/day Developmental LOAEL = 30 mg/kg/day, based on increased post implantation loss
870.3800	2–Generation reproduction and fertility effects rat	43492836 (1994) Acceptable/guideline 0, 60, 300, 600 ppm Premating doses for P_1 males/females: 0/0, 4.5/5.0, 22.2/24.5, 44/44.6 mg/kg/day Premating doses for F_1 males/females: 0/0, 4.4/5.1, 22.5/25.6, 44.6/50.7 mg/kg/day	Parental systemic NOAEL = 4.4–4.5 mg/kg/day, M Parental systemic LOAEL = 22.2–22.5 mg/kg/day, M, based on decreased absolute body weight/body weight gains of P_1 males during premating Offspring systemic NOAEL = 4.4–5.1 mg/kg/day Offspring systemic LOAEL = 22.2–25.6 mg/kg/day, based on decreased pup weights at weaning Reproductive NOAEL ≥44–50.7 mg/kg/day Reproductive LOAEL: not identified

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

Guideline No.	Study Type	MRID No. (year)/Classification/Doses	Results
870.4100	Chronic toxicity dog	43492834 (1994) Acceptable/guideline 0, 60, 120, 240 ppm M: 0, 2.1, 4.0, 8.7 mg/kg/day F: 0, 2.3, 4.5, 10.1 mg/kg/day	NOAEL = 4.0/4.5 mg/kg/day, M/F LOAEL = 8.7/10.1 mg/kg/day, M/F, based on decreased body weight/body weight gains
870.4200	Carcinogenicity mouse	43492838 (1994) Acceptable/guideline 0, 20, 120, 240 ppm M: 0, 2.8, 16.6, 34.5 mg/kg/day F: 0, 3.7, 21.9, 44.5 mg/kg/day	NOAEL = 2.8/3.7 mg/kg/day, M/F LOAEL = 16.6/21.9 mg/kg/day, M/F, based on decreased body weight gains, brain vacuolation, and scabbing of the skin (males) No evidence of carcinogenicity
870.4300	Combined chronic/carcinogenicity in rat	43492837 (1994) Acceptable/guideline 0, 60, 300, 600 ppm M: 0, 2.9, 15.0, 30.8 mg/kg/day F: 0, 3.6, 18.6, 37 mg/kg/day	NOAEL = 15 mg/kg/day, males LOAEL = 30.8 mg/kg/day, males, based on anemia NOAEL = 3.6 mg/kg/day, females LOAEL = 18.6 mg/kg/day, females, based on decreased body weight/body weight gain Classification: ''Suggestive Evidence of Carcinogenicity, but Not Sufficient to Assess Human Carcinogenic Potential'' based on significant trends in liver tumors (adenomas and combined adenomas/carcinomas), malignant histiocytic sarcomas, and testicular cell tumors in male rats and uterine polyps in female rats seen at the highest dose
870.5100	Bacterial reverse mutation	42770223 (1993) Acceptable/Guideline	Negative for reverse mutation in *S. typhimurium* strains TA 98, TA 100, TA 1535, TA 1537, TA 1538 and *E. coli* strain WP2 uvrA- exposed up to cytotoxicity (50 µg/plate, +/- S9)
870.5300	*In vitro* mammalian cell gene mutation in Chinese hamster ovary cells (CHO/HGPRT)	42770224, 43187601 (1993) Acceptable/Guideline	Independently performed tests were negative up to a cytotoxic and precipitating concentration (500 µg/ml) in the presence of S9 activation or the solubility limit (250 µg/ml) without S9 activation
870.5375	*In vitro* mammalian chromosome aberration (CHO)	43492843 (1994) Acceptable	The test was negative up to 100 µg/ml -S9 or 25 µg/ml +S9; higher doses with or without S9 activation were cytotoxic
870.5385	*In vitro* chromosome aberration assay in Chinese hamster lung (CHL) cells	43492839 (1994) Acceptable/Guideline	The test was negative up to a precipitating level without S9 activation (225 µg/ml) or a concentration range of 3.5–14.1 µg/ml +S9. Higher S9-activated doses (≥28 µg/ml) were cytotoxic
870.5395	Mammalian micronucleus (mouse)	42770225, 43187602 (1993, 1994) Acceptable/Guideline	The test was negative in mice administered single oral gavage doses of 7.5–30 mg/kg (males) or 5–20 mg/kg (females). Clinical toxicity (deaths in males and diarrhea in females) was seen at the HDT. There was, however, no evidence of cytotoxicity for the target organ
870.5550	Unscheduled DNA synthesis	42770226 (1993) Acceptable/Guideline	Negative for inducing unscheduled DNA synthesis in primary rat hepatocyte cultures exposed up to severely toxic concentrations (≥30 µg/ml)
870.6200	Acute neurotoxicity screening battery rat	43492829 (1994) Acceptable/guideline 0, 45, 90, 180 mg/kg	NOAEL = 45 mg/kg/day LOAEL = 90 mg/kg/day, based on lethargy in male rats on the day of treatment
870.6200	Chronic neurotoxicity rat	43492833 (1994) Acceptable/Guideline 0, 60, 300, 600 ppm M: 0, 2.6, 13.6, 28.2 mg/kg/day F: 0, 3.4, 18, 37.4 mg/kg/day	NOAEL = 2.6/3.4 mg/kg/day, M/F LOAEL = 13.6/18 mg/kg/day, M/F, based on the presence of myelinopathic alterations in the central nervous system (CNS) in male rats and decreased average body weights/body weight gains, food efficiency, absolute food consumption (females) and water consumption (males)

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

Guideline No.	Study Type	MRID No. (year)/Classification/Doses	Results
870.7485	Metabolism and pharmacokinetics rat	43492844 (1994) Acceptable/guideline 20, 200 mg/kg/day	Low recoveries of the radioactive dose in urine and tissues indicate limited absorption of CL 303,630 (chlorfenapyr) by rats. The radioactivity in urine, as a percent of administered dose, from the high dosed rats was about half that from the single and multiple-low dosed rats. More than 80% of the doses were eliminated in the feces. Most of the radioactivity was eliminated in the feces and urine within 48 hours of dosing. After 7 days, 89–121% of the dosed radioactivity was recovered. At sacrifice, female rats had greater (about twice) recovery of radioactivity in the carcass, blood, and fat at all doses than did males. The highest recovery of radioactivity from a single organ was from the liver (0.15–0.48% of dose) Metabolite and parent compound accounted for 72–91% of the radioactive doses. Parent compound was the major radioactive component found in excreta, accounting for approximately 40–70% of the administered doses. Minor amounts of eight primary and conjugated metabolites and four unidentified isolated components were detected, each at less than 10% of the dosed radioactivity. Liver and kidney contained several primary and conjugated metabolites and only minor levels of the parent compound (≤8.3% of the radioactivity in the sample). Based on the metabolites identified, the major deposition route of orally administered chlorfenapyr is fecal excretion of unaltered parent compound. Other pathways include cleavage of the ethoxymethyl side-chain, followed by de-alkylation and ring hydroxylation, and some degree of conjugation of the de-alkylated, ring-hydroxylated metabolite. The two rings of the molecule are not cleaved. Metabolites are excreted primarily in urine; accumulation in tissues is minimal

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. An additional safety factor (SF) may be required if the data base is incomplete. For chlorfenapyr EPA concluded that a developmental neurotoxicity (DNT) study is required based on the presence of neuropathology (CNS lesions) and neurotoxic signs seen in adult rats (males) and mice (both sexes). EPA further concluded that a UF of 10X is required until the data are received and evaluated. EPA does not have sufficient reliable data justifying the selection of a factor lower than the default 10X value for the additional SF for the protection or infants and children for this data gap.

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 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.

A summary of the toxicological endpoints for chlorfenapyr used for human risk assessment is shown in Table 2 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 15 mg/kg UF = 1,000 aRfD = 0.015 mg/kg	Special FQPA SF = 1X aPAD = aRfD ÷ FQPA SF = 0.015 mg/kg	Developmental toxicity study - rabbit LOAEL = 30 mg/kg/day based on increased post-implantation loss

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

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	NOAEL = 45 mg/kg UF = 1,000 aRfD = 0.045 mg/kg	Special FQPA SF = 1X aPAD = aRfD ÷ FQPA SF = 0.045 mg/kg	Acute neurotoxicity study - rat LOAEL = 90 mg/kg/day based on lethargy in male rats
Chronic Dietary (All populations)	NOAEL= 2.6 mg/kg/day UF = 1,000 cRfD = 0.003 mg/kg/day	Special FQPA SF = 1X cPAD = cRfD ÷ FQPA SF = 0.003 mg/kg/day	Chronic neurotoxicity study - rat LOAEL = 13.6/18 mg/kg/day, M/F, based on the presence of myelinopathic alterations in the CNS in male rats and decreased average body weights, body weigh gains, food efficiency, absolute food consumption (F), and water consumption (M) Supporting this endpoint are similar CNS lesions and skin lesions observed in the mouse carcinogenicity study (NOAEL = 2.8)

*The reference to the special 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.* Risk assessments were conducted by EPA to assess dietary exposures from chlorfenapyr 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 USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues (not anticipated residues); 100% crop treated for all registered and proposed commodities; and default DEEM® Version 7.76 processing factors for all commodities. EPA selected separate acute dietary endpoints for females 13–50 years old and the general U.S. population (including infants and children). Therefore, two separate acute dietary exposure assessments were performed for females 13–49 years old and for the general U.S. population and various population subgroups. These assessments conclude that the acute dietary exposure estimates are below EPA's LOC (<100% aPAD) at the 95th exposure percentile for females 13–49 years old (15% aPAD), and the general U.S. population (6% of the aPAD) and all other population subgroups. The most highly exposed population subgroup (other than females 13–49 years old) is children 1–2 years old, at 12% of the aPAD.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996, and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues (not anticipated residues); 100% crop treated for all registered and proposed commodities; and default DEEM® Version 7.76 processing factors for all commodities. An assessment of the general U.S. population and various population subgroups was conducted. This assessment concludes that the chronic dietary exposure estimates are below EPA's LOC (<100% cPAD) for the general U.S. population (24% of the cPAD) and all population subgroups. The most highly exposed population subgroup is children 1–2 years old, at 47% of the cPAD.

2. *Dietary exposure from drinking water.* The registered uses of chlorfenapyr include: Termiticide use, crack and crevice use, and use on ornamental plants grown in greenhouses. The proposed use is for vegetable crops grown in greenhouses. When used according to label directions, these uses are not expected to result in contamination of drinking 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). Chlorfenapyr is registered for residential crack and crevice use and in-ground termite use. EPA has addressed the issues of possible residential exposures to chlorfenapyr when used according to label directions, either as a termiticide or as a crack and crevice treatment. EPA concluded that there is essentially no incidental-oral or dermal exposures. Further, the low vapor pressure of chlorfenapyr makes inhalation exposure negligible.

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

EPA does not have, at this time, available data to determine whether chlorfenapyr 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 chlorfenapyr and any other substances and chlorfenapyr 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 chlorfenapyr 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 margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no evidence (qualitative or quantitative) for increased susceptibility following *in utero* exposure in the developmental toxicity studies in rats and rabbits or prenatal/postnatal exposure in the 2–generation reproduction study in rats. In both the rat and rabbit developmental toxicity studies maternal toxicity included decreased body weight gain. No developmental toxicity was noted in rats up to the highest dose tested of 225 mg/kg/day). Developmental toxicity in rabbits (increased post implantation loss) occurred at a higher dose than maternal toxicity. In the 2–generation reproduction study in rats, parental and offspring toxicity included body weight decrements at similar doses. No reproductive effects were noted up to the highest dose tested.

3. *Conclusion*. EPA evaluated the potential for increased susceptibility of infants and children from exposure to chlorfenapyr. EPA concluded that the toxicology data base was incomplete for FQPA purposes because a required DNT has not been submitted. The DNT was required due to the presence of neuropathology (central nervous system lesions) and neurotoxic signs seen in adult rats (males) and mice (both sexes). Other than lacking the DNT study, EPA identified no residual uncertainties for prenatal/postnatal toxicity. This decision is based on the following:

- There is no evidence (qualitative or quantitative) of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in developmental toxicity studies. There is no evidence (qualitative or quantitative) of increased susceptibility of rat offspring in the multi-generation reproduction toxicity study.
- There are no concerns or residual uncertainties for prenatal and postnatal toxicity in the available developmental and 2–generation reproduction toxicity studies.
- The conservative residue assumptions used in the dietary exposure risk assessments, and the completeness of the residue chemistry database.

EPA concluded that a FQPA SF in the form of UFDB of 10X is required until the data from the DNT study are received and evaluated. EPA does not have sufficient reliable data justifying the selection of a factor lower than the default 10X value for this data gap.

E. Aggregate Risks and Determination of Safety.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to chlorfenapyr will occupy 6% of the aPAD for the U.S. population, 15% of the aPAD for females 13 years and older, 12% of the aPAD for children 1–2 years old and 3% of the aPAD for infants < 1 year old. As explained in Unit III.C.2., there is no potential for acute dietary exposure to chlorfenapyr in drinking water. EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to chlorfenapyr from food will utilize 24% of the cPAD for the U.S. population, 10% of the cPAD for infants < 1 year old and 47% of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of chlorfenapyr is not expected. There is no potential for chronic dietary exposure to chlorfenapyr in drinking water. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

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). Chlorfenapyr is registered for use on sites that would result in negligible residential exposure and no exposure from drinking water. Therefore, the aggregate risk is equal to the risk from food, and does not exceed the Agency's LOC.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Residue analytical methods*. The proposed enforcement method is M2427, a gas chromatography/electron capture detection (GC/ECD) method with an limit of quantitation (LOQ) of 0.05 ppm. Method M2427 has been subjected to a successful independent laboratory validation (ILV) as well as an acceptable radiovalidation using samples obtained from lettuce and tomato metabolism studies. A version of this method, M2284 was sent to EPA's Analytical Chemistry Branch (ACB) in Beltsville, MD for a petition method validation (PMV) on oranges and citrus oil. Although the PMV was successful, minor revisions were required. A new version of analytical method M2284 with the recommended revisions has not been submitted. The Agency's review of PP 6F4716 concluded that method M2427 is adequate for data collection and tolerance enforcement purposes pending submission of the rewritten method M2284. Since M2427 is similar to M2284, the petitioner was directed to rewrite Method M2427 following the ACB comments regarding M2284. The petitioner has submitted Method 2427.02, which contains the requested revisions.

2. *Multiresidue method (MRM)*. The data requirement for MRM is satisfied pending U.S. Food and Drug Administration (FDA) review and acceptance of the MRM results. The petitioner previously submitted MRM recovery data for chlorfenapyr through FDA Protocols A through E. Protocols A and B were not applicable to chlorfenapyr. In Protocol C, chlorfenapyr gave a good response with the electron capture detector on three different GC columns. In Protocol D, using pears as a non-fatty food representative, the 5% OV-101 column gave the greatest sensitivity at 0.05 and 0.50 ppm. In Protocol E, chlorfenapyr eluted well on Florisil in both the ethyl ether/petroleum ether system and the alternate hexane/acetonitrile/methylene chloride system and gave acceptable recovery.

Adequate enforcement methodology 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 established Codex, Canadian, or Mexican maximum residue levels (MRLs) for chlorfenapyr on fruiting vegetables; therefore, harmonization of MRLs and U.S. tolerances is not an issue at this time.

C. Conditions

The following data are required as a condition of registration: A developmental neurotoxicity study to determine the cause/relationship of potential central nervous system/ myelinopathic alterations to neurotoxicity in the developing young.

V. Conclusion

Therefore, the tolerance is established for residues of chlorfenapyr, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile, in or on vegetables, fruiting, group 8 at 1.0 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–2003–0146 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 November 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–2003–0146, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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: September 22, 2003.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. A new section heading and text are added to § 180.513 to read as follows:

§ 180.513 Chlorfenapyr; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide chlorfenapyr [4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile] in or on the following raw agricultural commodities:

Commodity	Parts per million
Vegetables, fruiting, group 8	1.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–24405 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2175–CN]

RIN 0938–AM20

Medicaid Program; Time Limitation on Price Recalculations and Recordkeeping Requirements Under the Drug Rebate Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date of a final rule with comment period published in the **Federal Register** on August 29, 2003 (68 FR 51912). That rule finalizes separately, in an accelerated timeframe, two specific provisions of the September 19, 1995 proposed rule. It establishes new recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program. It also sets forth a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announces the pressing need for codification of fundamental recordkeeping requirements. It also announces our intention to continue to work on finalizing the complete drug

rebate regulation for the Medicaid drug rebate program. This document corrects the effective date.

EFFECTIVE DATE: The effective date of the August 29, 2003 final rule (68 FR 51912) amending 42 CFR part 447 is corrected from October 1, 2003 to January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Marge Watchorn, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 2003, we published in the **Federal Register** a final rule with comment period entitled, ''Medicaid Program; Time Limitation on Price Recalculations and Recordkeeping Requirements Under the Drug Rebate Program.'' The rule establishes requirements for recordkeeping and time limits on price recalculations. The effective date of these requirements as stated in the August 2003 rule is October 1, 2003.

The Office of Management and Budget (OMB) declared that the August 2003 final rule is a major rule. Thus, we should have given January 1, 2004 as the effective date in accordance with 5 U.S.C. 801(a)(4). However, we erroneously incorporated an incorrect effective date of October 1, 2003. We have identified and corrected that error in the ''Correction of Errors'' section below.

II. Correction of Errors

In FR Doc. 03–21548 of August 29, 2003 (68 FR 51917), make the following correction:

- On page 51912, in column one, in the ''Dates'' section, remove ''October 1, 2003'' and replace it with ''January 1, 2004.''

III. Waiver of Notice of Proposed Rulemaking and Delay of the Effective Date

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register** and invite prior public comment on a proposed rule. Final rules generally have a 30-day or longer prospective effective date. However, this document merely provides a correction to the effective date of the final rule with comment published on August 29, 2003. This correction is being made based on OMB's decision that the August 2003 final rule is a major rule. Thus, we should have given January 1, 2004 as the effective date in accordance with 5 U.S.C. 801(a)(4). However, we erroneously incorporated an incorrect effective date of October 1, 2003. It would be impracticable, unnecessary and contrary to the public interest to publish a proposed rule and solicit comments since this document is technical in nature and does not impose new limits on the substantive rights of the industry or the public. Similarly, given the imminence of the effective date, it would serve no useful purpose to further delay the effective date of this technical correction. Therefore, to the extent that 5 U.S.C. 553 applies to this action, we find good cause to waive notice and comment procedures and our usual delay in the effective date.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 24, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 03–24550 Filed 9–25–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 483 and 488

[CMS–2131–F]

RIN 0938–AL04

Medicare and Medicaid Programs; Requirements for Paid Feeding Assistants in Long Term Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule permits a long term care facility to use paid feeding assistants to supplement the services of certified nurse aides under certain conditions. States must approve training programs for feeding assistants using Federal requirements as minimum standards. Feeding assistants must successfully complete a State-approved training program and work under the supervision of a registered nurse or licensed practical nurse. The intent is to provide more residents with help in eating and drinking and reduce the incidence of unplanned weight loss and dehydration.

EFFECTIVE DATE: These regulations are effective on October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Nola Petrovich, (410) 786–4671.

SUPPLEMENTARY INFORMATION: *Copies:* This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

I. Background

Legislation

Sections 1819(a) through (e) and 1919(a) through (e) of the Social Security Act (the Act) set forth the requirements that long term care facilities must meet to participate in the Medicare and Medicaid programs, respectively. Sections 1819(f)(2) and 1919(f)(2) of the Act contain requirements for nurse aide training and competency evaluation programs (NATCEP). Sections 1819(g) and 1919(g) of the Act contain the criteria that we use to assess a facility's compliance with the requirements. These statutory provisions were mandated by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203, enacted December 22, 1987). The requirements for long term care facilities are codified at 42 CFR part 483, subpart B; the nurse aide training and competency evaluation program requirements are codified at 42 CFR part 483, subpart D; and the survey, certification and enforcement procedures are codified at 42 CFR part 488, subparts E and F.

Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act and regulations at § 483.75(e) define a nurse aide as any individual furnishing nursing or nursing-related services to residents in a facility, who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide services without pay. Sections 1819(f)(2) and 1919(f)(2) of the Act set forth the requirements for approval of a nurse aide training and competency evaluation program, but do not define ''nursing'' or ''nursing related'' skills. Section 483.152 of the regulations specifies nurse aide training requirements. These include, for example, basic nursing skills, personal care skills, communication and interpersonal skills, infection control, safety and emergency procedures, mental health and social service needs, residents' rights, care of cognitively impaired residents, and basic restorative services.

On March 29, 2002, we published in the **Federal Register** a proposed rule, ''Requirements for Paid Feeding Assistants in Long Term Care Facilities'' (67 FR 15149), that offered long-term care facilities the option to use paid feeding assistants, if consistent with State law.

Current Program Experience

Currently, there is no provision in the regulations for the use of single-task workers, such as paid feeding assistants, in nursing homes. To ensure the safety

of facility residents, we require that qualified nursing staff provide assistance with eating and drinking, although there is some question whether or not all residents need medical supervision. This group of personnel includes registered nurses, licensed practical nurses, and certified nurse aides who have completed 75 hours of training. However, volunteers, who are usually family members, may also feed residents, because the law and regulations exclude volunteers from the definition of certified nurse aide.

Nursing homes in many States report a continuing shortage of certified nurse aides.[1], [2], [3]. Nursing homes are finding it increasingly difficult to train and retain sufficient numbers of qualified nursing staff, especially certified nurse aides. Certified nurse aides perform the majority of resident care tasks. Other employers often pay similar wages for less physically and emotionally demanding jobs. This makes it harder for nursing homes to employ enough nursing staff to perform routine nursing care and to feed residents who need minimal help or just encouragement at mealtimes. Feeding residents is often a slow process and competes with more complex tasks, such as bathing, toileting, and dressing changes, as well as urgent medical care.

For many elderly nursing home residents, physical and psychological changes often interfere with eating ability and meal consumption. Residents may need assistance with feeding if they have, for example, cognitive impairment, impaired swallowing due to muscular weakness or paralysis, a tendency to aspirate or choke, poor teeth, ill-fitting dentures or partial plates, or poor muscular or neurological control of their arms or hands, as with Parkinson's disease.

Current Trends

Nursing homes are caring for an aging population that has more acute clinical conditions than in the past. The result is a higher percentage of nursing home residents who need higher levels of care, which takes more staff time and leaves less time for routine tasks, such as ensuring that residents eat their meals and drink enough fluids.

[1] Stone, R.I. (2001) Frontline workers in long-term care: Research challenges and opportunities. *Generations, 25(1),* 49–57.

[2] Stone, R.I., with Weiner, J. A. (2001). *Who will care for us? Addressing the long-term care workforce crisis.* Washington, D.C: Robert Wood Johnson Foundation.

[3] United States General Accounting Office. Nursing Workforce: Recruitment and Retention of Nurses and Nurses Aides Is a Growing Problem. (Washington, DC., May 2001)

In addition, evidence suggests that there has been a recent increase in assisted living facilities that house many individuals with minimal medical needs who previously would have been cared for in nursing homes. Both of these trends have resulted in a frailer nursing home population than previously, with residents who are more dependent on nursing staff for basic needs, such as feeding and personal care. A critical shortage of certified nurse aides in many parts of the country has resulted in a need for staff who are specially trained to help residents eat at mealtimes, to supplement, not replace certified nurse aides.

Some residents only need encouragement or minimal assistance, which does not require nursing training. Properly trained non-nursing personnel could provide this type of assistance. Nurse aides and other nursing staff receive training so that they are able to feed residents with all kinds of feeding problems. A higher level of training is required of nurse aides because nurse aides need to be able to deal with complicated feeding problems. However, when there is a nurse aide shortage, it is often the case that residents without complicated feeding problems receive little or no assistance at mealtimes with eating or drinking, while the nursing staff focuses on feeding residents with complicated problems. We believe there is a place in nursing homes for the use of feeding assistants who, after proper basic training in feeding techniques and working with the elderly, are able to feed residents who do not have complicated feeding problems. It is reasonable to require that feeding assistants receive a lower level of training than a nurse aide because feeding assistants would not handle complicated feeding cases. This would allow facilities, if they choose, to train other facility employees as feeding assistants so that available staff can feed residents at mealtimes.

Facility Staff Shortages

Because of the shortage of certified nurse aides and the increasingly complex medical needs of residents, facilities in some States have used paid feeding assistants to supplement certified nurse aides to ensure that residents take in adequate food and fluids. Generally, feeding assistants used by these facilities are part-time workers, often retired individuals, or homemakers who are available for a few hours a day. They may also be older students who come into the facility between 1 and 2 hours either at the noon or evening meal. In other facilities, staff shortages are so acute that all nonmedical employees, including the administrator of the facility, are required to complete training and help feed residents at mealtimes. Training facility personnel for functions other than their primary position is known as cross-training. There is anecdotal evidence that cross-training of personnel in nursing homes increases coordination and continuity of care.[1] It also contributes to increased morale and lower staff turnover.

There is no provision in Federal regulations for the employment of nursing home workers who perform only a single task without completing 75 hours of nurse aide training. Currently, residents must be fed by a registered nurse, licensed practical nurse, or a nurse aide who has completed 75 hours of training and who has been certified as competent to perform all nurse aide tasks. Volunteers may also feed residents. The reason for this existing policy is to ensure that residents who cannot, or do not, feed themselves are fed by trained nursing staff. This is intended to protect residents from unskilled workers who might injure a resident by not recognizing serious medical complications associated with eating.

Wisconsin and North Dakota are two States in which nursing homes have had serious difficulty hiring enough certified nurse aides and have used feeding assistants as a supplement to certified nurse aides. Other States have expressed interest in using paid feeding assistants, including Ohio, Minnesota, Florida, California, and Illinois. Florida and Illinois have both passed laws that permit the use of single task workers in their States, but they have not yet implemented the provisions.

Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years. Wisconsin uses a structured, formal program that requires a facility wanting to implement a feeding assistant program to submit an application for approval by the State. The classes are taught by a registered nurse, with a registered dietitian teaching the dietary elements of the program. A facility's approved program must include the following core areas: Interpersonal communication and social interaction; Basic nursing skills (including infection control); Personal care skills (assisting with eating, hydration); Basic restorative services (assistive devices for eating); Resident

[1] Stone, R.I., Reinhard, S.C., Bowers, B., Zimmerman, D., Phillips, C.D., Hawes, C., Fielding, J.A., and Jacobson, N. (2002).*Evaluation of the Wellspring Model for Improving Nursing Home Quality.*

rights; and special problems associated with Dementia (specialized feeding and intake problems). Participants who complete the training must demonstrate skills and pass a written test with a score of 80 percent or better. Feeding assistants are used solely for feeding residents who have no feeding complications. They are permitted to feed residents only in the dining room and operate under the direction of a registered nurse or licensed practical nurse. Feeding assistants serve to supplement care delivered by certified nurse aides, which frees up more extensively trained aides to perform more complex resident care tasks.

North Dakota has used paid feeding assistants for a number of years and has a slightly less formal program than that of Wisconsin. The residents to be fed are selected by the dietary and nursing staff. If a facility has a nurse aide training program, the training coordinator and dietitian work together to train new feeding assistants individually. After training and orientation, a new feeding assistant is assigned to one resident who needs minimal assistance. As the assistant gains skill and confidence, he or she is assigned to more residents at a meal or to a resident who requires a higher level of skill to feed. Typically, feeding assistants work only about 1½ hours per day, providing assistance at either the noon or evening meal.

Conclusion

We are committed to ensuring that long term care residents receive the best possible care. We recognize that a shortage of certified nurse aides may adversely affect resident care and prevent many residents from receiving adequate help with eating and drinking. Further, we are persuaded by the experience of States that have used paid feeding assistants, that proper training and medical direction of these feeding assistants minimizes the risk to residents, while providing substantial benefits to residents. After thoroughly considering this issue, we believe that the benefits to residents outweigh the potential risks. We believe that a policy change to allow the use of feeding assistants can be accommodated under existing statute. There is nothing in the statute governing requirements for long term care facilities (sections 1819 and 1919 of the Act) that would preclude the use of these workers and we believe that there is no conflict with other statutory requirements.

II. Provisions of the Proposed Regulations

We proposed that feeding assistants must complete successfully a State-approved training course that meets minimum Federal requirements specified in proposed § 483.160. These course requirements would consist of relevant items from the nurse aide training curriculum and would include feeding techniques; assistance with feeding and hydration; communication and interpersonal skills; appropriate responses to resident behavior; safety and emergency procedures, including the Heimlich Maneuver; infection control; resident rights; and recognizing changes in residents that are inconsistent with their normal behavior, and the importance of reporting those changes to the supervisory nurse. Facilities or States may want to add items to these minimum requirements.

We proposed that each facility that uses feeding assistants maintain a record of the individuals who have successfully completed the feeding assistance training. Facilities would be required to report to the State any incidents in which a feeding assistant has been found to neglect or abuse a resident, or misappropriate a resident's property. The State must then maintain a record of all reported incidents.

We proposed that a facility may use a paid feeding assistant to feed residents who do not have a clinical condition that would require the training of a nurse or nurse aide. Selection of residents to be fed would be made by the professional nursing staff, using the comprehensive assessment. Nurses or nurse aides would continue to feed residents who require the assistance of staff with more specialized training, such as those residents with recurrent lung aspirations, difficulty swallowing, or those residents on feeding tubes or parenteral/IV feedings. Feeding assistants would work under the direct supervision of registered nurses (RN) or licensed practical nurses (LPN), who are in the unit or on the floor where the feeding assistance is furnished. In proposed § 483.75(e), we revised the definition of ''nurse aide'' to clarify that paid feeding assistants are not performing nursing or nursing-related tasks.

Feeding assistants could be paid by the facility or paid under an arrangement with another agency or organization (§ 488.301). Facilities would be able to use staff who are not health care personnel as feeding assistants if they successfully complete the training program. This might include the administrator, activity staff, clerical, laundry, housekeeping staff, or others who see residents on a daily basis. However, feeding assistants are intended to supplement certified nurse aides, not substitute for certified or licensed nursing staff.

We proposed that these requirements would not apply to volunteers and family members.

III. Analysis of and Responses to Public Comments

We received over 6,000 public comments on the proposed rule. About 99 percent of commenters were overwhelmingly supportive of the proposal, but raised a large number of issues and offered many suggestions for clarifications and revisions to the final regulation. Commenters supporting the proposal included for-profit and not-for-profit nursing homes, national and State nursing home associations, national and State health care associations, State health and human services agencies, United States Congresspersons, and private citizens. Many beneficiary advocates and employee unions opposed giving facilities the option to use paid feeding assistants. A summary of the major issues and our responses follow.

Facility Option To Use Feeding Assistants

Comment: One commenter recommended that we conduct a pilot study or do further research before finalizing the proposal because there is a lack of data that would support the proposal. Another commenter suggested that we implement the proposal, but reevaluate the policy in 3 years to see if the objective is being met.

Response: We believe that the experience of Wisconsin and North Dakota has provided a demonstration of the merits of the use of paid feeding assistants. Both States have reported that in facilities that use feeding assistants, the benefits to residents include fewer cases of unexplained weight loss and dehydration than in facilities that do not use feeding assistants, with no reported ill effects.

Comment: Some commenters believed that the proposal is illegal, that is, there is no basis in the law to support the use of paid feeding assistants.

Response: Our review of the law indicates that there is nothing that would prohibit the use of feeding assistants and we believe that we have the authority and discretion under the law to implement this practice. Although commenters have focused on the language of the statute, at sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act that requires persons engaged in nursing or nursing related care to be trained either as a nurse or nurse aide, we do not consider the kinds of tasks facilities may ask feeding assistants to

provide as either nursing or nursing related. While feeding has been part of the nurse aide training curriculum, that requirement was predicated on the nurse aide having to tend to persons with pronounced eating complications (such as swallowing disorders) for which specialized training is essential. What facilities would be free to do as a result of this rule, however, is to use persons who have had a lesser level of training to assist residents who have no feeding issues that require any specialized attention. Thus, we do not consider feeding assistants who may be used by facilities under this rule to be engaged in nursing or nursing related activities.

Comment: Several commenters cited the lack of Federal oversight built into the proposal.

Response: The survey process will provide the Federal oversight of facilities' use of feeding assistants, as it does for other participation requirements. During surveys of nursing homes, surveyors will observe the meal or snack service to note if any of the residents receiving feeding assistance are having trouble, such as coughing or choking. If this is observed, surveyors will investigate to determine if this is an unusual occurrence or a chronic problem and whether feeding assistants have successfully completed the 8-hour training course. Surveyors will also determine if the resident receiving the feeding assistance is one who has no complicated feeding problems. This will be done by a review of medical charts and discussion with the professional nursing staff. Similarly, surveyors will note concerns about supervision of paid feeding assistants and investigate how the facility provides supervision by interviewing staff during meal or snack times and drawing their own conclusions from observations. Deficiencies will be cited by surveyors when they identify problems. By retaining training and employment records of feeding assistants, a facility will help document its compliance with Federal requirements, and have a record that surveyors may review when they survey the facility.

Comment: Some commenters were convinced that the use of feeding assistants will not improve the quality of care and may, in fact, lower it. One commenter contended that Wisconsin's use of feeding assistants did not lead to a documented improvement in quality of care. Others commented that use of feeding assistants would disrupt the continuity of care and reduce quality by creating an assembly line atmosphere.

Response: We are not aware of any data that would suggest that there is an improvement in the quality of care when residents are helped to eat by feeding assistants, nor are we aware of any data that would suggest a decline in quality of care. We are relying on support for the use of paid feeding assistants that has been provided by the Wisconsin and North Dakota survey agencies. Neither agency has indicated that use of feeding assistants has resulted in diminished quality of care.

Comment: A few commenters recommended that we prohibit a facility from training feeding assistants when it has certain deficiencies, in the same way we currently prohibit a facility from training nurse aides. For example, commenters suggested that we prohibit facilities from training feeding assistants if the facility has (1) any deficiency at level F or above; (2) a deficiency at any level in the area of nutrition, staffing, and residents' rights; (3) imposed against it a per instance civil money penalty (CMP) of $5,000 or more, a per day CMP of $5,000 or more cumulatively, a State monitor, or temporary manager; (4) an approved nurse-staffing waiver.

Several consumer advocacy groups recommended that we limit the authority for a facility to use feeding assistants to facilities that are authorized to conduct nurse aide training programs. In other words, if a facility loses the right to train nurse aides, it should also lose the right to train feeding assistants. Many providers took the opposite position, that a facility that loses nurse aide training rights should retain the right to train feeding assistants.

Response: The prohibition to which commenters refer is a statutory requirement that causes a facility to lose the right to train nurse aides when the facility has certain deficiencies specified in the law. We disagree with commenters and believe that each State needs the flexibility to respond to specific situations and make its own decision whether or not to permit a facility to train and use feeding assistants.

Facilities that have an approved nurse-staffing waiver, which waives requirements in § 483.30 to have a RN on staff 8 hours per day, 7 days per week, are still required to have adequate numbers of LPNs on staff at all times. Thus, even if RNs are unavailable, the supervision requirement for feeding assistants would be met by having LPNs on duty.

Comment: Many commenters said that they did not want us to limit hours worked by feeding assistants to mealtimes and advocated permitting feeding assistants to work whenever needed by a facility. Some facilities thought that feeding assistants could be used full time to provide snacks and liquids to residents, particularly those who cannot leave their room. These commenters believed that this would be a good way to reduce the potential for dehydration since assistants would have time to deliver liquids, provide social stimulation, and encourage bedfast residents to drink more fluids.

Response: The text of the regulations does not limit working hours to mealtimes. According to § 483.35(h), facilities may use feeding assistants at any time that the supervision requirements are met.

Comment: Many providers and individuals expressed strong support for the use of existing staff as feeding assistants, after proper training. A large number of providers reported that they favor this because existing staff, such as clerical, dietary, and housekeeping staff, are already trained in facility policies, are usually well acquainted with residents, and have time available to devote to feeding residents.

A number of other commenters were opposed to using existing staff as feeding assistants, citing their full-time responsibilities and concern about added burden.

Response: The text of the proposed regulations permits any individual to act as a feeding assistant if he or she meets the training and supervision requirements (§ 483.35(h)). Each facility's administrator is responsible for allocating available staff to necessary tasks and we believe that it is reasonable to leave the decision to the administrator whether to use as feeding assistants staff who are not health care personnel.

Comment: Some commenters suggested requiring that facilities assign feeding assistants to certain residents to ensure continuity of care.

Response: We believe that this decision is best left to each facility and the supervisory nurses.

Comment: Consumer advocates were concerned that insufficiently trained feeding assistants would endanger residents. Other commenters were concerned that feeding assistants might make clinical judgments and take actions that are beyond their scope of training or be unable to handle emergency situations.

Response: The purpose of the training is to ensure that feeding assistants are properly prepared to feed residents and recognize emergency situations that need the immediate help of a supervisory nurse. We believe that a training program that meets the requirements listed in § 483.160 will

ensure that a feeding assistant receives proper training.

Comment: One commenter suggested that we consider expanding the role and training of feeding assistants so that they can eventually assist in feeding residents with complex feeding problems.

Response: Individuals who have complex feeding problems, such as the need for IV or parenteral feedings, swallowing problems, and those with recurrent lung aspirations, need the assistance of professional nurses or certified nurses aides who have been trained to work with residents who have these needs. We do not believe that it is appropriate for feeding assistants to feed any residents other than those who are low risk and whose eating problems are uncomplicated.

Comment: Two senators and one congressman wrote in support of the proposal, noting the success of one state that used feeding assistants and experienced reduced weight loss and dehydration among nursing home residents. These commenters also reported that the Board of Nursing of one state had defined feeding as a nursing task and was concerned that this might prevent the state from using feeding assistants. (In the proposal, we indicated that feeding assistants would not be performing nursing or nursing-related tasks.) Another commenter believed that feeding is a nursing-related service and should not be performed by an individual with minimal training.

Response: The definition of the term, ''nursing and nursing-related tasks,'' is frequently prescribed by State law and, therefore, we are declining to impose a Federal definition of this term on all States. We believe the matter should be left with the State in those situations in which State law or standards-setting organizations have established a definition that is more restrictive than the Federal definition permitting the use of feeding assistants. We suggest that the State investigate whether a revision to State law would resolve this issue.

Staffing Issues

Comment: One consumer advocacy group suggested that we require state survey agencies to use the investigative protocol for staffing from the *State Operations Manual* in all facilities that request to use or use feeding assistants. This protocol, used to identify problems that may be associated with insufficient nursing staff, would ensure that a facility has an appropriate number of RNs and LPNs to supervise feeding assistants.

Response: We believe that facilities that request to use or use feeding assistants should be surveyed in the same way as any other facility. Surveyors should use the investigative protocol for staffing only when systemic problems relate to insufficient nursing staff.

Comment: A consumer advocate asked that we require facilities to post information about the numbers of feeding assistants, in addition to the current requirement to post the number of licensed and unlicensed staff employed per shift. The commenter also suggested that we require that feeding assistants wear badges or name tags so that they will be clearly recognized by other staff.

Response: A provision in the Medicare, Medicaid & State Child Health Insurance Program (SCHIP) Benefits Improvement & Protection Act of 2000 (BIPA) requires facilities to post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This provision is effective January 1, 2003. Because paid feeding assistants do not qualify as licensed or unlicensed nursing staff, facilities do not need to post the numbers of feeding assistants used by the facility. However, we will consider at a later date whether this might be useful and what additional burden it may impose on facilities.

With regard to name tags, we believe it is probably a good idea, but leave that decision to each facility and do not see the need for us to make this a requirement.

Use of Volunteers

Comment: Several commenters suggested that we require volunteers to complete the training requirements for feeding residents, pointing out that it is inconsistent not to do so.

Response: While we believe that it is a good idea for family members and volunteers to take the training, and we encourage it, we are not making this a requirement. Many volunteers in facilities are family members who are only there to feed a relative. Often, family members have been feeding the ailing resident for years, both at home and in the facility. We are leaving it to each facility to determine whether or not to require volunteers and family members to complete feeding assistance training. Ultimately, facilities are responsible for the care and safety of residents, even if the resident is fed by a relative or friend.

Payment Issues

Comment: Some providers were concerned about how they would be paid for the training and services of feeding assistants. A few commenters recommended that we allocate payment for feeding assistants to the nursing cost center.

Response: Skilled nursing facilities will not receive additional Medicare payment for the costs of using feeding assistants. Medicare payment for residents in skilled nursing facilities is made through a prospective payment system, which covers all costs (routine, ancillary, and capital) of covered skilled nursing facility services furnished to beneficiaries under Part A of the Medicare program. For Medicare payment, the term and concept, ''nursing cost center,'' is outdated, but still may be used in some State Medicaid programs. The Medicare SNF PPS per diem payment rate is based, in part, on levels of care and resources required and received by residents, established by the resident assessment instrument specified in § 483.20. The system does not require that tasks performed by a staff person fit within a direct care or indirect care category (such as a nursing cost center).

Medicaid payments for nursing facilities are established by each State. Therefore, it would be up to individual States to determine whether they would need to change their payment rates for those facilities that use feeding assistants and how the rates would be changed. However, because feeding assistants will likely be paid at a minimum wage, which is less than the wage paid to certified nurse aides, facilities participating in Medicare and Medicaid may incur less cost than if they had hired additional certified nurse aides to perform feeding and hydration duties.

Comment: One provider reported using workers who pass out trays, provide beverages and condiments, talk to and encourage residents, record food intake, and perform routine dining room tasks. The commenter asked if the facility would be able to continue to use these workers.

Response: A facility may continue to use workers who perform the dietary service functions described by the commenter. They need not be trained as feeding assistants if they do not feed residents. Facilities are required to employ sufficient support personnel to carry out the functions of the dietary service. If these workers successfully complete the feeding assistant training course, the facility may also use them to feed residents. However, as we indicated in the last response, the Medicare program pays skilled nursing facilities a prospectively determined per diem rate, which does not require that

tasks performed by personnel fit into a direct or indirect care category. For Medicaid payment, payment is determined by each Medicaid state agency.

Determining Which Residents Can Be Fed by Feeding Assistants

Comment: One state commented that it is cumbersome to rely on the comprehensive assessment to determine which residents may be safely fed by a feeding assistant. Instead, the decision should be left entirely up to the professional judgment of the licensed nurse. A consumer advocacy group also indicated that the comprehensive assessment/annual evaluation is not an effective tool for the assessment of residents to be fed because the information may not be current. Several organizations suggested that we emphasize the importance of the RN or LPN's professional judgment along with input from the interdisciplinary team, as reflected in the comprehensive assessment, when selecting residents for feeding assistance.

Response: We agree with commenters and are revising § 483.35(h)(1)(ii) to say that the decision about whether a resident is to be fed by a feeding assistant is based on the charge nurse's assessment and the resident's latest assessment and plan of care. We note that facilities that choose to use paid feeding assistants remain responsible for any adverse actions resulting from the use of these assistants, as with any other employee.

Comment: An organization representing licensed professionals suggested that the RN or LPN should consult with a speech-language pathologist when a resident is suspected to have, or is at risk for, swallowing difficulties.

Response: We have no objection to this and facilities may use this approach if they choose.

Comment: Several commenters indicated that the criteria for selecting residents to be fed is inadequate and suggested that we define the clinical conditions that would require feeding by an RN or LPN or nurse aide. Another commenter suggested that we prohibit feeding assistants from feeding residents with swallowing problems.

Response: We believe that the clinical decisions as to which residents may be fed by feeding assistants are best left to the professional judgment and experience of RNs and LPNs who work in the facility and have personal knowledge of a resident's day-to-day condition. If we were to define clinical conditions, we would only be substituting the judgment of professional nurses employed by the Federal government for the judgment of nurses working in facilities. We believe that professional nurses conclude that certain clinical conditions relating to eating and drinking would require the skills and knowledge of an RN or LPN. These conditions include, but are not limited to, recurrent lung aspirations, difficulty swallowing, and tube or parenteral/IV feedings.

Comment: One commenter suggested a number of more stringent requirements for facilities, including (1) obtaining informed consent from the resident or resident's representative that the resident agrees to be fed by a feeding assistant and accepts the risks and benefits; (2) an individualized feeding plan; and (3) a certification by a licensed nurse in a resident's medical record that the resident can be safely fed by a feeding assistant prior to each instance of feeding.

Response: We understand that the commenter intends the proposed provisions to be in the best interest of residents, but we believe that, for the most part, they are unduly burdensome for facilities to implement. To require consent before a resident can receive help from a feeding assistant implies that this is a high risk procedure, which we believe it is not. We believe that the Wisconsin and North Dakota experience indicates that it is safe to use well-trained feeding assistants who are properly supervised. It would be inconsistent to require residents to give informed consent for feeding assistance when they need not do so for any other services provided by a facility. Further, a feeding plan would very likely duplicate part of the care planning process. Consequently, we are not revising the rule to accommodate the commenter's suggestions.

Supervision

Comment: Commenters, concerned about lack of supervision, pointed out that the proposed requirement, in § 483.35(h)(2)(ii), that a nurse is in the unit or on the floor, exceeds the licensed nursing requirements in most states. Other commenters worried that the shortage and high turnover rates of licensed and unlicensed nursing staff could mean that fewer staff are familiar with residents and could result in inadequate monitoring.

Response: Facilities are required by § 483.30, Nursing services, to have sufficient qualified nursing staff available on a daily basis to meet residents' needs for nursing care. The requirement in § 483.30, Nursing services, is that, unless waived, a facility must have a RN on duty 8 consecutive hours per day, 7 days a week. A facility must also have a sufficient number of licensed nurses and other nursing personnel on a 24-hour basis to provide nursing and related services to residents. The proposed requirement that a feeding assistant work under the direct supervision of a RN or LPN builds on the requirement that sufficient licensed nursing staff are on duty 24 hours a day. We believe that, if a facility chooses to use feeding assistants, it is the facility's responsibility, and in its best interest, to ensure that adequate supervisory nursing staff is available.

However, we recognize that the supervision requirement is unclear and subject to a variety of interpretations. Therefore, we are revising § 483.35(h)(2) by removing the word, ''direct'' from the phrase, ''direct supervision,'' because it may unintentionally imply visual contact between a feeding assistant and a supervisory nurse. This is not possible in most facilities, especially if assistants are feeding residents in their rooms. Next, we are removing the requirement that a nurse be in the unit or on the floor where the feeding assistance is furnished and immediately available to give help. As commenters noted, this sentence is unclear. While we are not prescribing the precise means by which facility RNs or LPNs assert their supervisory responsibilities, we will expect that facilities do so in a way that avoids negative outcomes for their residents. Additionally, we are requiring that a feeding assistant call a supervisory nurse on the resident call system when there is an emergency or a need for help. All facilities are currently required to have a resident call system.

Comment: Consumer advocates expressed concern about a potential lack of supervision and suggested that all residents who are fed by feeding assistants be fed in the dining room or other congregate area to ensure that a licensed nurse is physically present. Other commenters supported allowing feeding assistants to feed residents in their rooms, citing the fact that many of the most frail residents do not go to the dining room and are least likely to get adequate assistance with eating. Numerous commenters cited examples of bedfast residents, unable to feed themselves or reach the food, receiving no help at mealtime, after which the tray is removed, untouched by the resident.

Response: We share commenters' concerns about adequate supervision of feeding assistants to ensure the safety of residents. We are equally concerned, however, that those residents who are

unable or unwilling to go to a congregate dining area receive needed feeding assistance in their rooms. We are confident that the nurse in charge, using his or her professional judgment in assessing residents who are appropriate for feeding assistance, will be able to select residents who can safely be fed in their own rooms.

Comment: An organization representing nursing home employees noted that nursing staff is already overworked and supervising feeding assistants would only add to the burden. Another commenter indicated that the proposed supervision requirement would further burden RNs and LPNs because they would have to stay in the dining room during mealtimes and this would limit their availability elsewhere in the facility.

Response: Adequate supervisory staff is just one factor that a facility needs to consider when deciding whether or not to use feeding assistants. If a facility chooses to use paid feeding assistants, it would be the facility's responsibility to ensure that it has sufficient RNs and LPNs available to adequately supervise feeding assistants without adding undue burden on the staff. When using feeding assistants, there will be a need for a facility to balance the increase in staff available to meet resident needs with the increased need to supervise these assistants.

Training

State-Approved Training Course

Comment: Several providers asked whether facilities would be able to hire paid feeding assistants if the State does not approve a training program for feeding assistants. Many providers supported giving facilities maximum flexibility to implement the proposal without lengthy state approval requirements. One commenter suggested that we require all states to mandate feeding assistant programs in all facilities.

Other commenters believed that, before facilities may opt to use feeding assistants, States should be able to decide whether implementing feeding assistant programs is in the best interest of the State or consistent with State law.

Several providers, provider organizations, and States asked that we remove the requirement that a training course for feeding assistants be State approved, citing potential burden on States, cost, and delays in implementing feeding programs. One State with a large number of facilities and a shortage of resources was concerned about the potential burden of approving a large number of feeding programs. Commenters, instead, suggested that we require that an individual complete a training course that meets the requirements of § 483.160. In this case, the facility would maintain documentation of compliance with the requirements and surveyors would review the training records at annual surveys.

Many states and providers asked for clarification on our expectations in terms of state approval. They wondered whether other entities, such as community colleges, would be permitted to offer the training. One commenter noted that travel to community colleges and cost would discourage individuals from taking the training. There was also a question about the frequency with which a state would need to review or reapprove a feeding assistant program. Another commenter suggested that we offer more specific guidance to states to assist them in establishing criteria for training programs and others suggested using established models from Wisconsin and North Dakota.

Response: We have chosen to retain the requirement that States approve training programs for feeding assistants. We believe that this will give States the necessary control and flexibility to structure approval processes for training programs to fit the needs of each State. States that have large numbers of facilities and resources that are stretched to the limit may want to minimize any burden associated with State approval of training programs, while States with fewer facilities may structure approval in a very different way.

However, States also have the flexibility not to implement a program for approval of feeding assistant training programs. If a State does not implement an approval program, the result is that facilities in that State will not be able to hire any paid feeding assistants.

Training Content

Comment: We received a variety of comments on training, including requests for additional requirements, removal of requirements, and clarifying changes. Many commenters asked that we provide more specificity on training requirements and establish a minimum number of hours of training. Suggestions for hours of training ranged from 5 to 75.

Response: We believe that being overly prescriptive on the content of training is unnecessary, would reduce flexibility to offer these training programs, and would unnecessarily limit the ability of States and providers to develop these programs within the scope of their considerable knowledge. However, to ensure that training is not conducted in a superficial manner, we are revising § 483.160(a) to require that a training course for feeding assistants include, at a minimum, 8 hours of training.

Comment: A few commenters suggested that we specify in the text of the regulation that a feeding assistant must ''successfully'' complete the entire training course before he or she is qualified to work with residents in the facility.

Response: We agree with the commenters that successful completion of the training course is essential and are revising § 483.35(h)(2)(i) by adding the word ''successful.'' We believe that it is reasonable to expect that a feeding assistant will successfully complete the training course before working directly with residents. This is a basic safety precaution to ensure that residents are protected. After completion of training, a facility may want to slowly ease a feeding assistant into the work by feeding a resident who needs minimal assistance, as North Dakota does.

Comment: Many commenters advocated requiring a competency test before feeding assistants are permitted to work with residents.

Response: We are not including a requirement for a competency test in the final rule. We believe that the instructor or supervisory nurse will be able to assess the competency of trained feeding assistants.

Comment: Several commenters objected to the inclusion of the Heimlich Maneuver in the training course and its use by feeding assistants. They were concerned that its use by a robust feeding assistant on a frail resident might result in rib fractures or other injuries. Commenters emphasized that only nursing staff should determine the need for, and administer, the Heimlich Maneuver. Instead, they suggested that the training course emphasize the need for feeding assistants to recognize symptoms that should be immediately reported to licensed supervisory staff for further action.

Response: The Heimlich Maneuver is an emergency procedure that is taught to the public, as well as medical personnel. It seems reasonable to retain this training requirement in view of the fact that nurse aides are trained to use this procedure and they may also be strong individuals. Proper training is essential and feeding assistants will receive the same training on the Heimlich Maneuver as nurse aides. Also, experienced RNs tell us that training in handling emergencies will

emphasize the need for a feeding assistant to call for help immediately, and then, if necessary, begin a procedure like the Heimlich.

Comment: One commenter suggested that, if a facility uses a feeding assistant under an arrangement with another organization, the facility must verify that the feeding assistant has successfully completed the training.

Response: Section 483.35(h)(2) already provides for this. It says that, if a facility uses a paid feeding assistant, the facility must ensure that the individual has completed a State-approved training course. The burden of proof is on the facility to ensure that any feeding assistant it uses is properly trained.

Comment: Commenters suggested a number of additions to the general training requirements. One suggestion was to require that training programs explicitly include feeding problems of the cognitively impaired, since 60–70 percent of nursing home residents are cognitively impaired. Other suggestions included training in dementia, food and drug interactions, diet consistencies, how much and how to feed, resident preferences, difficulty swallowing, and emphasis on performing only feeding tasks for which training has been provided. A consistent concern of commenters was a need for a training emphasis on recognition and prevention of emergency situations associated with feeding, such as dysfunctional swallowing, tracheal aspiration, esophageal obstruction, and other potentially severe emergency situations.

Response: It is important to note that the training course requirements proposed in § 483.160 are minimum requirements. States and facilities are free to add to those requirements. However, many of the training additions suggested by commenters appear to be more useful in the training of nurse aides than feeding assistants, who will feed residents without any significant eating problems.

Comment: Several commenters suggested that we address payment for training in the same way that we do in the regulations for nurse aides. One commenter asked that we prohibit facilities from charging potential feeding assistants for training. Another asked if a facility may require that a trained feeding assistant repay the facility for training if he or she leaves? A commenter asked if a facility can require that a trained feeding assistant work for a set period of time.

Response: Judging from provider comments received, there will be a strong demand for feeding assistants and it is unlikely that facilities will want to charge for training. Generally, these positions will be part time and will not require extensive training that would be costly for the facility. We think it is unnecessary to amend the regulations to provide for payment provisions similar to those for nurse aides. With regard to a facility entering into a contract with a feeding assistant that would require that individual to work for a certain period of time, there is nothing in our regulations that would prohibit this practice. This is strictly between the facility and the feeding assistant.

Qualifications of Instructors

Comment: Many individual commenters and professional organizations asked that we establish standards or qualifications for instructors of the training program. Commenters suggested numerous licensed or certified health care professionals who could conduct the training, including RNs, registered dietitians, licensed physical therapists, licensed speech therapists, and occupational therapists. Dietitians argued that they have the expertise in food and nutrition issues in long-term care settings, are trained to teach self-help feeding devices, and basic restorative feeding services, citing established manuals and materials that would support this practice. Occupational therapists argued that they are trained to match an analysis of disabilities with effective interventions, resources and adaptations.

Several commenters strongly recommended that we prohibit feeding assistants from teaching each other on-the-job.

Response: It is apparent that a number of options are available in terms of the variety of licensed or certified health care professionals that may be qualified to conduct training for feeding assistants. Some, RNs and LPNs, are employed full time in facilities and would be available without additional cost to conduct the training. Dietitians may be employed by a facility full time, part time, or on a consultant basis. Other health care professionals may be available at additional cost; however we believe that it would be inappropriate to permit a feeding assistant to train another. Consistent with the flexibility for States to develop a State-approved training program, we are deferring to States the decision as to which individuals would be qualified to teach the feeding assistant training.

Maintenance of Records

Comment: Several commenters pointed out that there is no requirement for states to maintain a formal registry of feeding assistants or to check with other states for background information. One commenter suggested that states report information on feeding assistants to the nurse aide registry and provide this information to facilities for hiring purposes. Others suggested that we require facilities to check with the nurse aide registry before employing individuals as feeding assistants in case the individual had worked as a nurse aide previously.

Response: We have decided to include only nurse aides in the nurse aide registry, largely because the law is so specific about the requirements. Also, we believe it is not necessary to further burden States by requiring them to establish and maintain a separate registry for feeding assistants. As we explain later in the preamble, states are already required by § 488.335 to review and investigate all allegations of abuse, neglect, and misappropriation of resident property. This information can be accessed by any hiring facility. Facilities need to screen feeding assistants, as any other employee, to try to ensure that individuals have no history that would preclude their interaction with frail elderly residents.

Comment: Several commenters reported that there is no provision for feeding assistants trained in one facility, city, or state to carry that training forward so that it does not have to be repeated. There is no requirement for a facility to request a copy of an individual's training record before he or she is hired as a feeding assistant. A commenter suggested that we establish a requirement for states to have reciprocity agreements within each state or between states.

Response: It is not our intent that individuals repeat training when moving to another facility. However, we believe that it is unnecessary to establish extensive regulatory provisions for requesting records or for state reciprocity agreements in this case. As with any other job applicant, a feeding assistant should indicate where he or she was last employed and a hiring facility may contact the former employer to verify employment and training. States are currently required to review allegations of abuse, neglect, or misappropriation of resident property. A hiring facility should be able to contact the state for that information.

Reporting Abuse, Neglect, and Misappropriation of Residents' Property

Comment: Commenters had a number of suggestions concerning proposed § 483.160(c), which requires a facility to report to the state all incidents of a paid

feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property. That section also requires a state to maintain a record of all reported incidents. One state reported that it already has a requirement for criminal background checks and a law requiring that facilities report allegations of abuse and neglect. Other commenters suggested language changes to the text. One commenter noted that § 483.160(c) is inconsistent with § 488.335, which requires a state to review all allegations of resident neglect, abuse, and misappropriation of property, and follow procedures in § 488.332. Section 488.332 requires a state to establish procedures to investigate complaints of participation requirements.

Response: We agree with the commenter regarding requirements in proposed § 483.160(c). Paragraph (c) is unnecessary because it repeats certain provisions of existing § 488.335. Since § 488.335 already establishes state requirements for review of allegations of neglect, abuse, misappropriation of property, and procedures for investigation of complaints and hearings, we are removing proposed paragraph (c) in § 483.160.

Definition of Paid Feeding Assistant

Comment: Many commenters objected to the term, feeding assistant, saying that it has a pejorative connotation and it lacks sensitivity to the elderly. Others thought that the term failed to include the importance of fluid intake. Commenters suggested a variety of alternatives, including the following: meal assistant; food and hydration aide or assistant; nourishment aide, nutrition assistant, nutritional aide, nutrition-hydration assistant; dining assistant; and resident assistant.

Response: The commenters make a good point, which we had not recognized when drafting the proposal. However, the term, feeding assistant, was widely used by states and organizations before our proposal. Rather than change the term in the regulations, we suggest that facilities and states use whatever term they prefer.

IV. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. The following provisions of this final rule differ from the proposed rule:

- We are reorganizing and revising § 483.35(h) so that paragraph (h)(1) applies to State approval of training courses for feeding assistants. We are adding the requirement that a feeding assistant must successfully complete a State-approved training course, and do so before feeding residents.
- Also, in revised § 483.35(h)(1), we are clarifying that a facility may use a paid feeding assistant if it is consistent with State law.
- In revised § 483.35(h)(2), we are revising the supervision requirement to remove the word, ''direct,'' from the phrase, ''direct supervision.''
- Also, in revised § 483.35(h)(2), we are removing the requirement that a supervisory nurse be in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary. In place of that sentence, we are adding the requirement that a feeding assistant call a supervisory nurse for help during an emergency on the resident call system.
- In revised § 483.35(h), we are adding a new paragraph (3) concerning resident selection criteria to replace proposed § 483.35(h)(1)(ii). In new paragraph (3), we are replacing the term, ''clinical condition'' with the phrase, ''complicated feeding problem.''
- In § 483.35, we also specify that a complicated feeding problem includes, but is not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.
- Also, in § 483.35, we provide that a facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care.
- In § 483.160(a), we are adding a requirement that the State-approved training course include a minimum of 8 hours of training covering the topics listed in § 483.160(a).
- In § 483.160(c), we are removing the requirement that a facility report to the State all incidents of a paid feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property, and that a State must maintain a record of all reported incidents. This paragraph unnecessarily duplicates existing requirements in § 488.335, Action on complaints of resident neglect and abuse, and misappropriation of resident property.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Nursing homes in two States currently use feeding assistants and eight other States have expressed an interest in implementing this policy. While public comments from nursing homes and provider organizations indicated strong support for the use of feeding assistants, only 13 States responded to the proposal. Some States indicated interest and others had concerns about the cost of implementation and other issues, so we do not now have a better idea of how many States will choose to approve the use of feeding assistants in nursing homes. In addition, it remains a facility option, so we still do not know how many facilities in which States will choose this option, nor do we know how many feeding assistants would be used by each facility. There are approximately 17,000 nursing homes in the nation, and they are not evenly distributed within States. Wisconsin reported that about 25 percent of nursing homes in the State used feeding assistants. On a nationwide basis, we believe that it is reasonable to project that 20 percent of facilities will use feeding assistants. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 483.160(b)

1. Requirement

A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

2. Burden

We estimate that 20 percent of nursing homes may implement this policy (20 percent of 17,000 = 3,400 facilities/respondents). If we assume that each facility will hire two feeding assistants, this results in a total of 6,800 feeding assistants. Depending on the method chosen by a facility to collect this information, we believe that each facility (respondent) would spend no more than 30 minutes per month (6 hours per year) entering feeding assistant information into its record-

keeping system. Some months, facilities may have no information to add. With 3,400 facilities at 6 hours/year, the total would be 20,400 hours for facilities. Using a clerical wage cost of $10 per hour, the total facility burden is estimated to be $204,000.

We are submitting a copy of regulation § 483.160 to OMB for its review of the information collection requirements. The revision is not effective until OMB has approved it.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: Julie Brown, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be emailed to the following address: email: *baguilar@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule is not a major rule. The costs of using feeding assistants will be covered by existing Medicare payment and, most likely Medicaid payment, depending on how a State establishes payment rates. Skilled nursing facilities receive an all-inclusive per diem Medicare payment rate for each resident's care. This includes all costs (routine, ancillary, and capital) of covered skilled nursing facility services furnished to beneficiaries under Part A of the Medicare program. Skilled nursing facilities will not receive additional Medicare payment for the costs of using feeding assistants.

Medicaid payments for nursing facilities are established by each State. Therefore, it would be up to individual States to determine whether they would need to change their payment rates for those facilities that use feeding assistants and how the rates would be changed. However, because feeding assistants will likely be paid at a minimum wage, which is less than the wage paid to certified nurse aides, facilities participating in Medicare and Medicaid that use feeding assistants may incur less cost than if they had hired additional certified nurse aides to perform feeding and hydration duties.

State costs associated with feeding assistant training programs are considered administrative expenses and are funded under Medicaid with matching funds at 50 percent Federal financial participation. Any information we have on potential State costs of implementing feeding assistant programs comes from States that have used such programs in the past. One State, Wisconsin, has a well-structured program and has experienced relatively minimal costs. One registered nurse spends approximately 10 percent of her time reviewing and approving facility feeding assistant training programs. This represents 10 percent of a full-time equivalent position (FTE), which is reported by Wisconsin to be a cost of about $7,000 per year. At a time when the use of feeding assistants was highest, a quarter of Wisconsin's 420 nursing homes, or 100 to 110 facilities, used feeding assistants. The number of feeding assistants used by each facility varies according to the size of the home, with the maximum number estimated to be 5 for a large, 200- to 250-bed home. Feeding assistants are typically paid at the same minimum wage. The number of hours each feeding assistant works at a facility is also variable and different for each worker and facility. Further, some facilities use only existing staff as trained feeding assistants. Because of the number of hours worked by each feeding assistant is variable, we do not have an exact estimate of the total cost to Wisconsin for using feeding assistants. However, this summary of Wisconsin's program may be helpful to other States, which are interested in establishing feeding assistant programs.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year. For purposes of the RFA, all long-term care facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity. The Small Business Administration considers 62 percent of long term care facilities to meet their definition of small entity (those facilities with total revenues of $11.5 million or less in any 1 year. We have determined that this rule will affect these entities, but, in general, we expect any cost to be covered by Medicare and Medicaid program payments.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This final rule does not affect small rural hospitals.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not have a cost greater than $110 million on the governments mentioned or on the private sector. In general, we believe that existing Medicare and Medicaid payments will cover the facility costs of using feeding assistants. Costs associated with surveys of long term care facilities are Federally funded, as are costs of State approval of training programs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We believe that this rule contributes to State flexibility by giving States the option to allow the use of feeding

assistants, control over how to structure the process of the approval of facility feeding assistant programs, and over elements of training, including instructor qualifications. In this way, States can establish policies that fit their unique circumstances. We believe that this rule will not have a substantial effect on State or local governments.

B. Anticipated Effects

These provisions will affect long term care facilities. We expect the provisions to be a substantial benefit both to facilities that are short-staffed and to residents who need help with eating and drinking. By using feeding assistants to help residents with eating and drinking, facilities can use trained, certified nurse aides to perform other, more complex resident care tasks.

Based on the large number of comments we received from nursing homes in a variety of States, we now believe that there is widespread support for the proposal and widespread intent to implement the provisions. However, because this is an optional provision, and some States may have legal barriers to implementation, we do not know how many States or facilities may implement these provisions, or how many feeding assistants will be used by facilities. Based on public comments, we anticipate that some facilities may hire no additional staff as feeding assistants, opting instead to use existing staff whose primary function is not direct care of residents, such as administrative or activities staff. We believe that feeding assistant training most likely will be conducted by existing facility staff and that there will be some nominal training costs to the facility since training requires time away from other duties that other staff may have to perform.

State-Approved Training Programs

We require that a feeding assistant successfully complete an 8-hour State-approved training course, which meets the Federal requirements in § 483.160(a). We have established no requirements on how States are to approve these programs, thereby giving each State the flexibility to decide what method makes the most sense in terms of use of its resources. There are several ways in which States may approach approval of training programs. States might choose to develop a model training program that complies with Federal requirements and require that any facility that trains and uses feeding assistants use that specific program. One model might be based on an existing training program already established, such as those conducted in Wisconsin or North Dakota. A State might choose to do a paper review of each facility's training program, or the State might insist on a site visit to review a facility's program. Lastly, a State might initially deem each facility's training program approved and then review the program when the facility is next surveyed. For some of these options, a State may need additional staff hours to review and approve training programs. However, States already review and approve training programs for nurse aides, so there is an existing administrative structure in place. There is the potential for increased State costs associated with review and approval of facility feeding assistant programs. However, any cost will depend on the approval method that is chosen by each State.

1. Effects on the Medicare and Medicaid programs.

There are approximately 17,000 facilities nationally. Long term care facilities that participate in the Medicare and Medicaid programs must provide the necessary care and services to residents so that they attain or maintain the highest practicable physical, mental, and psychosocial well being. To do this, facilities must employ sufficient staff on a 24-hour basis, including nursing staff, administrative, medically-related social services, dietary, housekeeping, and maintenance staff.

The Medicare program pays for skilled nursing facility services to eligible beneficiaries through a prospective payment system that covers all costs of covered services furnished to residents on a per diem basis. This Medicare SNF PPS per diem payment rate is based, in part, on levels of care and resources required and received by residents. The payment rate covers all care required and received by a resident and does not require that tasks performed by a staff person fit within a direct or indirect care category. Therefore, the Medicare program would not pay a skilled nursing facility any additional funds if the facility chooses to use feeding assistants.

Medicaid payments for nursing facilities are established by each State. Therefore, it would be up to individual States to determine whether they would need to change their payment rates for those facilities that use feeding assistants and how the rates would be changed.

C. Alternatives Considered

There has been a continuing shortage of certified nurse aides in recent years, along with a shortage of RNs and LPNs willing to work in nursing homes. Certified nurse aides perform the majority of resident care in a long term care facility and are the lowest paid workers, while RNs and LPNs receive higher wages commensurate with their advanced training, experience, and supervisory responsibilities.

One alterative to the use of paid feeding assistants is to broaden the hours during which meals are served so that everyone is not fed at the same time within a one-hour mealtime. Expanded meal service, covering perhaps a 3-hour mealtime, or a restaurant model, where meals are available most of the time, would allow existing staff more time to help feed residents. However, this option already exists in regulations, and other than a few innovative facilities, nursing homes have chosen not to use this method. The current preference of most nursing homes is for an institutional approach in which meals are served to all residents early morning, noon, and evening at fixed hours. As a result, the nursing home industry prefers the use of feeding assistants rather than an expanded meal service. The other alternative is not to publish a regulation on the use of feeding assistants and, instead, make greater use of volunteers to assist with feeding. The use of volunteers to assist with feeding assistance is permitted in the current regulations. However, it is questionable whether facilities could find sufficient numbers of volunteers to meet their needs.

D. Conclusion

We believe that both residents and providers will benefit from these provisions. Residents will receive more assistance with eating and drinking, both at meals and at snack time. Facilities will be able to use existing staff to assist at mealtimes and hire additional staff to meet the needs of residents, freeing certified nurse aides to perform more complex tasks that require their training.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, CMS is amending 42 CFR chapter IV as set forth below:
■ A. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B—Requirements for Long Term Care Facilities

■ 1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 483.35, the introductory text is republished, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 483.35 Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

* * * * *

(h) *Paid feeding assistants*—(1) *State-approved training course.* A facility may use a paid feeding assistant, as defined in § 488.301 of this chapter, if—

(i) The feeding assistant has successfully completed a State-approved training course that meets the requirements of § 483.160 before feeding residents; and

(ii) The use of feeding assistants is consistent with State law.

(2) *Supervision.* (i) A feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse (LPN).

(ii) In an emergency, a feeding assistant must call a supervisory nurse for help on the resident call system.

(3) *Resident selection criteria.*

(i) A facility must ensure that a feeding assistant feeds only residents who have no complicated feeding problems.

(ii) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

(iii) The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care.

* * * * *

§ 483.7 [Amended]

■ 3. Section 483.7 is amended as follows:
■ a. In paragraph (e)(1), the definition of ''Nurse aide'' is amended by adding a sentence to the end of the definition;
■ b. A new paragraph (q) is added.

The additions read as follows:

§ 483.75 Administration.

* * * * *

(e) * * * (1) * * *

(1) * * * Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301 of this chapter.

* * * * *

(q) *Required training of feeding assistants.* A facility must not use any individual working in the facility as a paid feeding assistant unless that individual has successfully completed a State-approved training program for feeding assistants, as specified in § 483.160 of this part.

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation; and Paid Feeding Assistants

■ 4. The heading of subpart D is revised to read as set forth above.

■ 5. A new § 483.160 is added to read as follows:

§ 483.160 Requirements for training of paid feeding assistants.

(a) Minimum training course contents. A State-approved training course for paid feeding assistants must include, at a minimum, 8 hours of training in the following:

(1) Feeding techniques.

(2) Assistance with feeding and hydration.

(3) Communication and interpersonal skills.

(4) Appropriate responses to resident behavior.

(5) Safety and emergency procedures, including the Heimlich maneuver.

(6) Infection control.

(7) Resident rights.

(8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) Maintenance of records. A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

■ B. Part 488, subpart E is amended as follows:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

Subpart E—Survey and Certification of Long Term Care Facilities

■ 1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

■ 2. Section 488.301 is amended by adding a new definition of ''Paid feeding assistant'' in alphabetical order to read as follows:

§ 488.301 Definitions.

As used in this subpart—

* * * * *

Paid feeding assistant means an individual who meets the requirements specified in § 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 22, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–24362 Filed 9–25–03; 8:45 am]

BILLING CODE 4120–03–U

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Alien Eligiblity for Representation by LSC Programs

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is revising the appendix to its regulations on restrictions on legal assistance to aliens. This appendix sets forth a listing of documents upon which recipients may rely to verify the eligibility of non-U.S. citizens' applicants for legal assistance from LSC-funded programs.

EFFECTIVE DATE: This rule is effective as of September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007–3522; (202) 295–1624; *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION: Recipients of Legal Services Corporation (''Corporation'') funds are permitted by law to provide legal assistance only to U.S. citizens and certain legal aliens. Recipients are required to verify the

eligibility of non-U.S. citizen applicants for legal assistance by seeing documentary proof of the applicant's status. This appendix sets forth a listing of documents upon which recipients may rely to verify the eligibility of non-U.S. citizens applicants for legal assistance from LSC-funded programs.

List of Subjects for 45 CFR 1626

Aliens, Grant programs—law, Individuals with disabilities, Legal services.

■ For reasons set forth above, 45 CFR 1626 is amended as follows:

PART 1626—RESTRICTIONS on LEGAL ASSISTANCE TO ALIENS

■ 1. The authority citation for Part 1626 continues to read as follows:

Authority: Pub. L. 104–208, 110 Stat. 1321; Pub. L. 104–134, 110 Stat. 3008.

■ 2. The Appendix to Part 1626 is revised to read as follows:

Appendix to Part 1626

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS

Alien category	Immigration Act (INA)	LSC regs; 45 CFR § 1626	Examples of acceptable documents
LAWFUL PERMANENT RESIDENT ...	INA § 101(a)(20); 8 USC § 1101(a)(20).	§ 1626.5(a)	I–551 or I–151 *or* I–181 (Memorandum of Creation of Record of Lawful Permanent Residence), with approval stamp; *or* passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; *or* order granting registry, suspension of deportation, cancellation of removal, or adjustment of status from the INS, an immigration judge, the BIA, or a federal court; *or* I–327 Reentry Permit; *or* I–94 with stamp indicating admission for lawful permanent residence; *or* any verification from INS or other authoritative document.
ALIEN WHO IS —married to U.S. citizen, or. —parent of U.S. citizen, or— unmarried child under 21 of U.S. citizen *and* —has filed an application for adjustment of status to permanent residency.	INA §§ 208, 210, 244 (replaced by INA § 240A(b) for aliens in proceedings initiated on or after 4/1/97), 245, 245A, 249; 8 USC §§ 1158, 1160, 1254 (replaced by 1229b(b) for aliens in proceedings initiated on or after 4/1/97), 1255, 1255a, 1259.	§ 1626.5(b)	Proof of relationship to U.S. citizen* *and proof of filing:*** I–485 (application for adjustment of status based on family-based visa, registry, or various special adjustment laws) *or* I–256A or EOIR–40 (application for suspension of deportation) *or* EOIR–42 (application for cancellation of removal) *or* I–817 (application for Family Unity) *or* I–881 (application for NACARA suspension or special rule cancellation and adjustment) *or* OF–230 (application at consulate for visa) *or* I–129F (Petition for Alien Fiancé(e) (for spouses and children of USCs applying for K-status) *or* I–130 (family-based immigrant visa petition) *or* I–360 (self-petition for widow(er) or abused spouse or child) *or* I–539 indicating application for V status *or* I–589 (application for asylum) *or* I–698 (application to adjust from temporary to permanent residence) *or* I–730 (refugee/asylee relative petition) *or* any verification from INS or other authoritative document. *Proof of relationship may include: copy of marriage certificate accompanied by proof of spouse's U.S. citizenship; copy of birth certificate, religious archival document such as baptismal certificate, adoption decree or other documents demonstrating parentage of a U.S. citizen; copy of birth certificate, baptismal certificate, adoption decree, or other documents demonstrating alien is a child under age 21, accompanied by proof parent is a U.S. citizen; or in lieu of the above, a copy of INS Form I–130 (visa petition) or I–360 (self-petition) containing information demonstrating alien is related to such a U.S. citizen, accompanied by proof of filing.

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS—Continued

Alien category	Immigration Act (INA)	LSC regs; 45 CFR § 1626	Examples of acceptable documents
			**Proof of filing may include a fee receipt or cancelled check showing that the application was filed with the INS or the immigration court; a filing stamp showing that the application was filed; or a copy of the application accompanied by a declaration or attestation signed by the immigrant, or the immigrant's attorney or legal representative for the application, that such form was filed. Proof of filing is also established by: a letter or Form I–797 from INS or the immigration court acknowledging receipt of or approval of one of the above-listed forms; *or* Form I–94 (arrival/departure record) or I–512 (advance parole) indicating entry to pursue an above-listed application; *or* I–688B or I–766 (employment authorization document) coded 8 CFR § 274a. 12(c)(9) (applicant for adjustment), (c)(10) (applicant for suspension or cancellation, (c)(16) (applicant for registry), (c)(21) (S-visa principal or dependent), (c)(20) or (22) (legalization applicant), (c)(24) (LIFE Act legalization applicant), (a)(9) (K–status), (a)(13)(Family Unity), (a)(14) (LIFE Act Family Unity), (a)(15) (V-status), (a)(16) or (c)(25) (T-status) or (c)(8) (asylum applicant).
REFUGEE	INA § 207, 8 USC § 1157.	§ 1626.5(c)	I–94 or passport stamped ''refugee'' or ''§ 207'' *or* I–688B or I–766 coded 8 CFR § 274a.12(a)(3)(refugee) or § 274a. 12(a)(4)(paroled as refugee) *or* I–571 refugee travel document *or* any verification from INS or other authoritative document.
ASYLEE	INA § 208, 8 USC § 1158.	§ 1626.5(c)	I–94 or passport stamped ''asylee'' or ''§ 208'' *or* an order granting asylum from INS, immigrantion judge, BIA, or federal court *or* I–571 refugee travel document *or* I–688B coded 8 CFR § 274a. 12(a)(5)(asylee) *or* any verification from INS or other authoritative document.
GRANTED WITHHOLDING OR DEFERRAL OF DEPORTATION OR REMOVAL.	INA § 241(b)(3) or former INA § 243(h), 8 USC § 1251(b)(3) or former 8 USC § 1253(H).	§ 1626.5(e)	I–94 stamped ''§ 243(h)'' or ''241(b)(3)'' or an order granting withholding or deferral of deportation or removal from INS, immigration judge, BIA, or federal court *Also acceptable* I–688B coded 8 CFR § 274a.12(a)(10)(granted withholding of deportation or removal) *or* any verification from INS or other authoritative document.
CONDITIONAL ENTRANT	INA § 203(a)(7), 8 USC § 1153(a)(7).	§ 1626.5(d)	I–94 or passport stamped ''conditional entrant'' *or* any verification from INS or other authoritative document.
H–2A AGRICULTURAL WORKER	INA § 101 (a)(15)(H)(ii); 8 USC § 1101 (a)(15)(ii).	§ 1626,11	I–94 or passport stamped ''H–2'' *or* any verification from INS or other authoritative document.
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT.	INA § 210 8 USC § 1160	§ 1626.10(d)	I–688, 688A, 688B, or 766 indicating issuance under § 210 (or under 8 CFR § 274a. 12(a)(2), with other evidence indicating eligibility under INA § 210) *or* any verification from INS or other authoritative document.

Victor M. Fortuno,
Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–24327 Filed 9–25–03; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 180

[Docket No. RSPA–03–10373 (HM–220D)]

RIN 2137–AD86

Hazardous Materials: Approval Program for Certain Persons Performing Visual Requalification of DOT Specification Cylinders; Extension of Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule; extension of compliance date and request for comments.

SUMMARY: RSPA is extending the compliance date of the regulations contained in 49 CFR 107.805(f) and 180.209(g) of the Hazardous Materials Regulations that require persons who perform visual requalification of DOT specification cylinders to obtain approval from RSPA and to mark the requalifier identification number assigned by RSPA on cylinders successfully requalified after September 30, 2003. This September 30, 2003 date is extended to May 31, 2004.

DATES: *Effective Date.* This rule is effective September 26, 2003.

Compliance Date: Delayed compliance with certain requirements is as specified in the regulatory text.

Comments Date: Comments must be received by October 27, 2003.

ADDRESSES: You may submit comments identified by the docket number RSPA–01–10373 (HM–220D) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001. If sent by mail, comments are to be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard.
- Hand Delivery: Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (*see* **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Linda Cooper, (202) 366–4512, Office of Hazardous Materials Approvals and Exemptions, or Sandra Webb, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 2002, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket No. RSPA–01–10373 (HM–220D) (67 FR 51625) amending the requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The revisions were made to simplify the regulations, respond to petitions for rulemaking, address recommendations of the National Transportation Safety Board, and enhance the safe transportation of hazardous materials in cylinders. The effective date of the final rule was October 1, 2002.

The August 8, 2002 final rule extended current approval requirements for persons who requalify DOT specification cylinders to persons who requalify certain cylinders by performing a complete external visual inspection. The rule requires each person who performs a visual inspection in accordance with § 180.209(g) to obtain an approval from us and to mark the requalifier identification number assigned by RSPA on a cylinder that successfully passes a visual requalification after September 30, 2003. The approval requirements are contained in § 107.805(f). The approval requirements do not apply to a person who does prefill cylinder inspections such as prescribed in § 173.301(a)(2) or annual inspection of self-contained breathing apparatus (SCUBA) cylinders and who does no visual requalifications under § 180.209(g). After publication of the final rule, we received more than 2,300 applications and many telephone calls from persons asking about the approval requirements.

Because of the number of applications that we continue to receive, we are not able to complete processing and assigning requalifier identification numbers by the October 1, 2003 compliance date and we are concerned that many affected persons may not get their applications in by that date. Therefore, in this interim final rule, we are extending the compliance date after which persons who perform visual cylinder requalifications under § 180.209(g) must obtain approval from us and mark their assigned requalifier identification number on cylinders that have been successfully requalified to May 31, 2004.

II. Comments on This Interim Final Rule

Because October 1, 2003 is the mandatory compliance date currently prescribed in the HMR for marking cylinders with a requalifier identification number, we are issuing this interim final rule without prior notice and public comments. For this same reason, we are making these amendments effective without the customary 30-day delay following publication. Although an opportunity for public comment has not been provided prior to the issuance of this interim final rule, we are seeking public comments to this action. We may further amend the compliance date if warranted, based on the merits of comments.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The interim final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This interim final rule amends an August 8, 2002 final rule that made revisions to requirements applicable to the maintenance, requalification, repair and use of DOT specification cylinders.

A regulatory evaluation prepared for the August 8, 2002 final rule is available for review in the docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. This interim final rule imposes no new costs of compliance on the regulated industry. Based on the assessment in the original regulatory evaluation, I hereby certify that while this interim final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed regulatory flexibility analysis for the August 8, 2002 final rule is available for review in the docket.

C. Executive Order 13132

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This interim final rule preempts state, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This interim final rule addresses covered subject item 5 above and preempts state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this interim final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This interim final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. The amendments contained in this interim final rule impose no changes to the information collection and recordkeeping requirements contained in the August 8, 2002 final rule, which were approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and assigned control numbers 2137–0022 (approved through 09/30/2005) and 2137–0557 (approved through 12/31/2005).

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This interim final rule extends the mandatory compliance date for certain persons who requalify cylinders to obtain approval from us and mark their assigned requalifier identification number on successfully requalified cylinders. The approval requirements were adopted in an August 8, 2002 final rule. The regulatory evaluation prepared for the August 8, 2002 final rule contains an environmental assessment and is in the public docket for this rulemaking. The August 8, 2002 final rule incorporates new cylinder technologies through new and updated incorporations by reference of consensus standards developed by CGA; increases flexibility for cylinder requalifiers, and users; and facilitates compliance with the HMR by clarifying and reorganizing regulatory requirements applicable to cylinders. In addition, the August 8, 2002 final rule improves the overall safety performance of DOT specification cylinders by addressing several identified safety problems. The August 8, 2002 final rule contains revisions to reduce unintentional releases of hazardous materials from cylinders during transportation and, therefore, will reduce environmental damage associated with such releases. To the extent that the revisions in this interim final rule maintain safety for transportation of hazardous materials in cylinders, we find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, and Reporting and recording requirements.

■ In consideration of the foregoing, title 49, Chapter I, Subchapters A and C of the Code of Federal Regulations, are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

§ 107.805 [Amended]

■ 2. In § 107.805, in the last sentence in paragraph (f), amend by revising the date ''September 30, 2003'' to read ''May 31, 2004''.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.209 [Amended]

■ 4. In § 180.209(g), in the fourth sentence, amend by revising the date ''September 30, 2003'' to read ''May 31, 2004''.

Issued in Washington DC on September 17, 2003 under authority delegated in 49 CFR Part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–24354 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15712]

RIN 2127–AH08

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, delay of effective date and correcting amendment.

SUMMARY: This document delays the effective date of, and makes a correcting amendment to, the final rule published on July 25, 2003 (68 FR 43964) that updates the Federal motor vehicle safety standard on glazing materials.

DATES: The effective date of the final rule amending 49 CFR part 571, published at 68 FR 43964, July 25, 2003, as corrected by the amendment in this document, is delayed from September 23, 2003, to January 22, 2004. Voluntary compliance is permitted before that date.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4924. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

The standards that are the subject of these corrections are Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing materials,'' and FMVSS No. 500, ''Low-speed vehicles.'' A final rule amending these standards was published on July 25, 2003 (68 FR 43964). The rule updates FMVSS No. 205 so that it incorporates by reference the 1996 version of the industry standard, American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways (''ANSI/SAE Z26.1–1996''), on motor vehicle glazing. Currently, the Federal standard references the 1977 version of the industry standard and the 1980 supplement to that standard. The July 2003 final rule also simplifies understanding of the Federal glazing performance requirements. The amendments of the past 20 years to the standard resulted in a patchwork of requirements in the Federal standard that needed to be read alongside the industry standard in order to gain a comprehensive understanding of the overall requirements of the Federal standard.

Need for Correction

As published, the July 2003 final rule contained errors that need correction. First, this document corrects the effective date of the final rule to provide the 180-day lead-time discussed in the preamble. The **DATES** section of the document incorrectly cited that the rule would become effective on September 23, 2003. This has been corrected in the **DATES** section of this document to state that the effective date for the July 2003 final rule is January 22, 2004, which is 180 days after the publication date of the July 2003 final rule.

Second, this document corrects an inadvertent omission of a location restriction for Item 4A glazing. In the current FMVSS No. 205 (S5.1.2.11), NHTSA only permits Item 4A glazing—Rigid Plastic for Use in Side Windows Rearward of the ''C'' Pillar—to be used in side windows rearward of the ''C'' pillar. As stated in the final rule permitting the installation of Item 4A glazing published on August 12, 1996 (61 FR 41739) and subsequent letters of interpretation, NHTSA does not permit Item 4A glazing near rear-facing seats or side-facing seats in any motor vehicle because of the concern that occupants riding in those seating locations may be able to contact their heads against Item 4A glazing in a crash. The breaking of rigid plastic windows in a crash could leave sharp, pointed shards in the window frame which could easily be contacted by an occupant's head. There is also concern about occupant injury resulting from large shards of rigid plastic glazing being propelled inward by vehicle impacts with trees, poles, or other vehicles.[1]

In the July 2003 final rule, NHTSA incorporated by reference the ANSI/SAE Z26.1–1996 provision for Item 4A glazing that closely mirrors the requirements contained in the current FMVSS No. 205. It has come to our attention, however, that the ANSI/SAE Z26.1–1996 provision for Item 4A glazing does not contain the restriction that this Item of glazing only be permitted for use in side windows rearward of the ''C'' pillar. It would also permit Item 4A glazing in the rear windows of vehicles that previously were not allowed to have Item 4A glazing in any windows other than some rear side windows. The omission of this restriction was inadvertent and, as such, was not discussed or considered in either the Notice of Proposed Rulemaking published on August 4, 1999 proposing to amend FMVSS No. 205 by incorporating by reference ANSI/SAE Z26.1–1996 or in the July 2003 final rule. As such, the agency is taking this opportunity to correct the regulatory text of FMVSS No. 205 to make clear that Item 4A glazing is only permitted for use in side windows rearward of the ''C'' pillar.

[1] While not discussed in the 1996 final rule, the reduction in visibility through rear windows using plastic glazing due to abrasion and weathering creates significant safety concerns because a driver may have insufficient visibility to avoid a crash in the first place. This issue was not discussed in the 1996 final rule because all parties to that rulemaking agreed that inferior visibility in the rear window created an unsafe driving condition.

Correction of Publication

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, 49 CFR Part 571 as amended at 68 FR 43964 (July 25, 2003) is further amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

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

■ 2. Section 571.205 is amended by adding S5.5 to read as follows:

* * * * *

§ 571.205—Standard No. 205; Glazing materials

* * * * *

S5.5 Item 4A Glazing. Item 4A glazing, as specified in ANSI/SAE Z26.1–1996, may only be used in side windows rearward of the ''C'' pillar.

* * * * *

Issued: September 23, 2003.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. 03–24346 Filed 9–23–03; 3:34 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2003–16205]

RIN 2127–AJ19

List of Nonconforming Vehicles Decided To Be Eligible for Importation

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

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The revised list includes all vehicles that NHTSA has decided to be eligible for importation since October 1, 2002. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. *See* 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. *See* 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the revisions resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Because this rulemaking does not impose any regulatory requirements, but merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have been made, it has no economic impact.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Public Law 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does not have any retroactive effect. It does not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws

or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

7. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements, but merely revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation into the United States to include all vehicles for which such decisions have been made since October 1, 2001.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 400 to 999, which is due for revision on October 1, 2002, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal Motor Vehicle Safety Standards is eligible for importation*, is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under Sec. 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically by make. Eligible models within each make are listed numerically by ''VSA,'' ''VSP,'' or ''VCP'' number.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1973–1989'' means ''1973 through 1989'').

(d) The initials ''MC'' used in the Manufacturer column mean ''motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989;
	(b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;
	(c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214;
	(d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991;
	(b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208.
	(c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216;
	(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216;
	(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Acura	305			Legend		1990–1992
Acura	51			Legend		1988
Acura	77			Legend		1989
Alfa Romeo	196			164		1989
Alfa Romeo	76			164		1991
Alfa Romeo	156			164		1994
Alfa Romeo	124			GTV		1985
Alfa Romeo	70			Spider		1987
Audi	317			100		1990–1992
Audi	93			100		1989
Audi	244			100		1993
Audi	160			200 Quattro		1987
Audi	223			80		1988–1989
Audi	352			A4		1996–2000
Audi	400			A4, S4, RS4	8D	2000–2001
Audi	332			A6		1998–1999
Audi	337			A8		1997–2000
Audi	238			Avant Quattro		1996
Audi	364			TT		2000–2001
Bimota MC	397			DB4		2000
Bimota MC	397			SB8		1999–2000
BMW	248			3 Series		1995–1997
BMW	356			3 Series		2000
BMW	379			3 Series		1999, 2001
BMW		66		316		1978–1982
BMW	25			316		1986
BMW		23		318i and 318iA		1981–1989
BMW		16		320, 320i, and 320iA		1978–1985
BMW	283			320I		1990–1991
BMW		67		323i		1978–1985
BMW		30		325, 325i, 325iA, and 325E		1985–1989
BMW		24		325e and 325eA		1984–1987
BMW	197			325i		1992–1994
BMW	96			325i		1991
BMW		31		325iS and 325iSA		1987–1989
BMW	205			325iX		1990
BMW		33		325iX and 325iXA		1988–1989
BMW	194			5 Series		1990–1995
BMW	249			5 Series		1996–1997
BMW	314			5 Series		1998–1999
BMW	345			5 Series		2000
BMW	4			518i		1986
BMW		68		520 and 520i		1978–1983
BMW	9			520iA		1989
BMW		26		524tdA		1985–1986
BMW		69		525 and 525i		1979–1982
BMW	5			525i		1989
BMW		21		528e and 528eA		1982–1988
BMW		20		528i and 528iA		1979–1984
BMW		15		530i and 530iA		1978
BMW		22		533i and 533iA		1983–1984
BMW		25		535i and 535iA		1985–1989
BMW	15			625CSi		1981
BMW	32			628CSi		1980
BMW		18		633CSi and 633CSiA		1978–1984
BMW		27		635, 635CSi, and 635CSiA		1979–1989
BMW	313			7 Series		1995–1999
BMW	366			7 Series		1999–2001
BMW	299			7 Series		1990–1991
BMW	299			7 Series		1993–1994
BMW	232			7 Series		1992
BMW		70		728 and 728i		1978–1985
BMW	14			728i		1986
BMW		71		730, 730i, and 730iA		1978–1980
BMW	6			730iA		1988
BMW		72		732i		1980–1984
BMW		19		733i and 733iA		1978–1984
BMW		28		735, 735i, and 735iA		1980–1989
BMW		73		745i		1980–1986
BMW	361			8 Series		1991–1995
BMW	396			850 Series		1997
BMW		78		All other models except those in the M1 and Z1 series.		1978–1989

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
BMW		29		L7		1986–1987
BMW		35		M3		1988–1989
BMW		34		M5		1988
BMW		32		M6		1987–1988
BMW	260			Z3		1996–1998
BMW	350			Z8		2000–2001
BMW	406			Z8		2002
BMW MC	228			K1		1990–1993
BMW MC	285			K100		1984–1992
BMW MC	303			K1100, K1200		1993–1998
BMW MC	229			K75S		1987–1995
BMW MC	231			R1100		1994–1997
BMW MC	368			R1100		1998–2001
BMW MC	177			R1100RS		1994
BMW MC	359			R1200C		1998–2001
BMW MC	295			R80, R100		1986–1995
Bristol Bus			2	VRT Bus-Double Decker		1978–1981
Buell MC	399			All Models		1995–2002
Cadillac	300			DeVille		1994–1999
Cadillac	375			Seville		1991
Chevrolet	150			400SS		1995
Chevrolet	298			Astro Van		1997
Chevrolet	349			Blazer (plant code of ''K'' or ''2'' in the 11th position of the VIN).		1997
Chevrolet	405			Blazer		1986
Chevrolet	369			Cavalier		1997
Chevrolet	365			Corvette		1992
Chevrolet	242			Suburban		1989–1991
Chrysler	344			Daytona		1992
Chrysler	373			Grand Voyager		1998
Chrysler	276			LHS		1996
Chrysler	216			Shadow		1989
Chrysler	273			Town and Country		1993
Citroen			1	XM		1990–1992
Dodge	135			Ram		1994–1995
Ducati MC	241			600SS		1992–1996
Ducati MC	220			748 Biposto		1996–1997
Ducati MC	201			900SS		1990–1996
Ducati MC	398			996R		2001
Ducati MC	407			Monster 600		2001
Eagle	323			Vision		1994
Ferrari		76		208, 208 Turbo (all models)		1978–1988
Ferrari		36		308 (all models)		1978–1985
Ferrari		37		328 (except GTS)		1985, 1988–1989
Ferrari		37		328 GTS		1985–1989
Ferrari	86			348 TB		1992
Ferrari	161			348 TS		1992
Ferrari	402			360 (manufactured before September 1, 2002).		2002
Ferrari	376			360		2001
Ferrari	327			360 Modena		1999–2000
Ferrari	256			456		1995
Ferrari	408			456 GT & GTA		1996–1998
Ferrari	173			512 TR		1993
Ferrari	377			550		2001
Ferrari	292			550 Marinello		1997–1999
Ferrari	355			F355		1996–1998
Ferrari	259			F355		1995
Ferrari	391			F355		1999
Ferrari	226			F50		1995
Ferrari		38		GTO		1985
Ferrari		74		Mondial (all models)		1980–1989
Ferrari		39		Testarossa		1987–1989
Ford	265			Bronco		1995–1996
Ford	322			Escort (Nicaragua)		1996
Ford			9	Escort RS		1994–1995
Ford	268			Explorer		1991–1998
Ford	367			Mustang		1993
Ford	250			Windstar		1995–1998
Freightliner	179			FLD12064ST		1991–1996

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Freightliner	178			FTLD112064SD		1991–1996
GMC	384			Blazer		1978
GMC	383			Jimmy		1980
GMC	134			Suburban		1992–1994
Harley Davidson	202			FX, FL, XL Series		1978–1997
Harley Davidson	253			FX, FL, XL Series		1998
Harley Davidson	281			FX, FL, XL Series		1999
Harley Davidson	321			FX, FL, XL Series		2000
Harley Davidson	362			FX, FL, XL Series		2001
Harley Davidson	372			FX, FL, XL Series		2002
Harley Davidson	393			FX, FL, XL Series		2003
Harley Davidson	374			VRSCA		2002
Harley Davidson	394			VRSCA		2003
Hobson			8	Horse Trailer		1985
Honda	319			Accord		1992–1999
Honda	280			Accord		1991
Honda	128			Civic DX		1989
Honda	309			Prelude		1994–1997
Honda	191			Prelude		1989
Honda MC	106			CB1000F		1988
Honda MC			22	CBR 250		1989–1994
Honda MC	348			CMX250C		1978–1987
Honda MC	174			CP450SC		1986
Honda MC	358			RVF 400		1994—2000
Honda MC	290			VF750		1994–1998
Honda MC	358			VFR 400		1994–2000
Honda MC			24	VFR400, RVF400		1989–1993
Honda MC	315			VFR750		1991–1997
Honda MC	34			VFR750		1990
Honda MC	315			VFR800		1998–1999
Honda MC	294			VT600		1991–1998
Hyundai	269			Elantra		1992–1995
Jaguar	78			Sovereign		1993
Jaguar		41		XJ6		1978–1986
Jaguar	47			XJ6		1987
Jaguar	215			XJ6 Sovereign		1988
Jaguar		40		XJS		1980–1987
Jaguar	195			XJS		1994–1996
Jaguar	175			XJS		1991
Jaguar	129			XJS		1992
Jaguar	336			XJS, XJ6		1988–1990
Jaguar	330			XK–8		1998
Jaguar Daimler	12			Limousine		1985
Jeep	211			Cherokee		1991
Jeep	164			Cherokee		1992
Jeep	254			Cherokee		1993
Jeep	180			Cherokee		1995
Jeep	224			CJ–7		1979
Jeep	382			Grand Cherokee		2001
Jeep	404			Grand Cherokee		1994
Jeep	217			Wrangler		1993
Jeep	255			Wrangler		1995
Jeep	341			Wrangler		1998
Jeep (Japan)	389			Grand Cherokee (LHD)		1997
Kawasaki MC	233			EL250		1992–1994
Kawasaki MC	190			KZ550B		1982
Kawasaki MC	182			ZX1000–B1		1988
Kawasaki MC	222			ZX400		1987–1997
Kawasaki MC	312			ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999
Kawasaki MC	288			ZX600		1985–1998
Kawasaki MC	247			ZZR1100		1993–1998
Ken-Mex	187			T800		1990–1996
Kenworth	115			T800		1992
KTM MC	363			Duke II		1995–2000
Land Rover	212			Defender 110		1993
Land Rover	338			Discovery		1994–1998
Lexus	293			GS300		1993–1996
Lexus	307			RX300		1998–1999
Lexus	225			SC300, SC400		1991–1996
Lincoln	144			Mark VII		1992
Magni MC	264			Australia, Sfida		1996–1998
Maserati	155			Bi-Turbo		1985

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Mazda	184			MX–5 Miata		1990–1993
Mazda	199			RX–7		1986
Mazda	279			RX–7		1987–1995
Mazda	42			RX–7		1978–1981
Mazda	351			Xedos 9		1995–2000
Mercedes Benz		54		190	201.022	1984
Mercedes Benz		54		190 D	201.126	1984–1989
Mercedes Benz		54		190 D (2.2)	201.122	1984–1989
Mercedes Benz		54		190 E	201.028	1986 –1989
Mercedes Benz	22			190 E	201.024	1990
Mercedes Benz	45			190 E	201.024	1991
Mercedes Benz	71			190 E	201.028	1992
Mercedes Benz	126			190 E	201.018	1992
Mercedes Benz		54		190 E (2.3)	201.024	1983–1989
Mercedes Benz		54		190 E (2.6)	201.029	1986–1989
Mercedes Benz		54		190 E 2.3 16	201.034	1984–1989
Mercedes Benz		52		200	123.220	1979–1985
Mercedes Benz		52		200	123.020	1978–1980
Mercedes Benz		55		200	124.020	1985
Mercedes Benz		52		200 D	123.120	1980–1982
Mercedes Benz	17			200 D	124.120	1986
Mercedes Benz	11			200 E	124.021	1989
Mercedes Benz	109			200 E	124.012	1991
Mercedes Benz	75			200 E	124.019	1993
Mercedes Benz	3			200 TE	124.081	1989
Mercedes Benz	168			220 E		1993
Mercedes Benz	167			220 TE Station Wagon		1993–1996
Mercedes Benz		52		230	123.023	1978–1985
Mercedes Benz		52		230 C	123.043	1978–1980
Mercedes Benz		52		230 CE	123.243	1980–1984
Mercedes Benz	84			230 CE	124.043	1991
Mercedes Benz	203			230 CE		1992
Mercedes Benz		52		230 E	123.223	1978–1985
Mercedes Benz		55		230 E	124.023	1985–1987
Mercedes Benz	1			230 E	124.023	1988
Mercedes Benz	20			230 E	124.023	1989
Mercedes Benz	19			230 E	124.023	1990
Mercedes Benz	74			230 E	124.023	1991
Mercedes Benz	127			230 E	124.023	1993
Mercedes Benz		52		230 T	123.083	1978–1985
Mercedes Benz		52		230 TE	123.283	1978–1985
Mercedes Benz		55		230 TE	124.083	1985
Mercedes Benz	2			230 TE	124.083	1989
Mercedes Benz		52		240 D	123.123	1978–1985
Mercedes Benz		52		240 TD	123.183	1978–1985
Mercedes Benz		52		250	123.026	1978–1985
Mercedes Benz	172			250 D		1992
Mercedes Benz	245			250 E		1990–1993
Mercedes Benz		55		260 E	124.026	1985–1989
Mercedes Benz	105			260 E	124.026	1992
Mercedes Benz	18			260 SE	126.020	1986
Mercedes Benz	28			260 SE	126.020	1989
Mercedes Benz		52		280	123.030	1978–1985
Mercedes Benz		52		280 C	123.050	1978–1980
Mercedes Benz		52		280 CE	123.053	1978–1985
Mercedes Benz		52		280 E	123.033	1978–1985
Mercedes Benz	166			280 E		1993
Mercedes Benz		53		280 S	126.021	1980–1983
Mercedes Benz		51		280 S	116.020	1978–1980
Mercedes Benz		44		280 SC	107.022	1978–1981
Mercedes Benz		51		280 SE	116.024	1978–1988
Mercedes Benz		53		280 SE	126.022	1980–1985
Mercedes Benz		53		280 SEL	126.023	1980–1985
Mercedes Benz		51		280 SEL	116.025	1978–1980
Mercedes Benz		44		280 SL	107.042	1978–1985
Mercedes Benz		52		280 TE	123.093	1978–1985
Mercedes Benz		52		300 CD	123.150	1978–1985
Mercedes Benz		55		300 CE	124.050	1988–1989
Mercedes Benz	64			300 CE	124.051	1990
Mercedes Benz	83			300 CE	124.051	1991
Mercedes Benz	117			300 CE	124.050	1992
Mercedes Benz		52		300 D	123.133	1978–1985

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Mercedes Benz		52		300 D	123.130	1978–1985
Mercedes Benz		55		300 D	124.130	1985–1986
Mercedes Benz		55		300 D Turbo	124.133	1985–1989
Mercedes Benz		55		300 E	124.030	1985–1989
Mercedes Benz	114			300 E	124.031	1992
Mercedes Benz	192			300 E 4-Matic		1990–1993
Mercedes Benz		53		300 SD	126.120	1981–1989
Mercedes Benz		53		300 SE	126.024	1985–1989
Mercedes Benz	68			300 SE	126.024	1990
Mercedes Benz		53		300 SEL	126.025	1986–1989
Mercedes Benz	21			300 SEL	126.025	1990
Mercedes Benz		44		300 SL	107.041	1986–1988
Mercedes Benz	7			300 SL	107.041	1989
Mercedes Benz	54			300 SL	129.006	1992
Mercedes Benz		52		300 TD	123.193	1978–1985
Mercedes Benz		55		300 TD Turbo	124.193	1986–1989
Mercedes Benz		55		300 TE	124.090	1986–1989
Mercedes Benz	40			300 TE	124.090	1990
Mercedes Benz	193			300 TE		1992
Mercedes Benz	310			320 CE		1993
Mercedes Benz	142			320 SL		1992
Mercedes Benz		44		350 SC	107.023	1978–1979
Mercedes Benz		51		350 SE	116.028	1978–1980
Mercedes Benz		51		350 SEL	116.029	1978–1980
Mercedes Benz		44		350 SL	107.043	1978
Mercedes Benz		44		380 SC	107.025	1981–1989
Mercedes Benz		53		380 SE	126.032	1979–1989
Mercedes Benz		53		380 SE	126.043	1982–1989
Mercedes Benz		53		380 SEL	126.033	1980–1989
Mercedes Benz		44		380 SL	107.045	1980–1989
Mercedes Benz	296			400 SE		1992–1994
Mercedes Benz	169			420 E		1993
Mercedes Benz		53		420 SE	126.034	1985–1989
Mercedes Benz	230			420 SE		1990–1991
Mercedes Benz	209			420 SEC		1990
Mercedes Benz		53		420 SEL	126.035	1986–1989
Mercedes Benz	48			420 SEL	126.035	1990
Mercedes Benz		44		420 SL	107.047	1986
Mercedes Benz		44		450 SC	107.024	1978–1989
Mercedes Benz		51		450 SE	116.032	1978–1980
Mercedes Benz		51		450 SEL	116.033	1978–1988
Mercedes Benz		51		450 SEL (6.9)	116.036	1978–1988
Mercedes Benz		44		450 SL	107.044	1978–1989
Mercedes Benz	56			500 E	124.036	1991
Mercedes Benz		44		500 SC	107.026	1978–1981
Mercedes Benz		53		500 SE	126.036	1980–1986
Mercedes Benz	35			500 SE	126.036	1988
Mercedes Benz	154			500 SE		1990
Mercedes Benz	26			500 SE	140.050	1991
Mercedes Benz		53		500 SEC	126.044	1981–1989
Mercedes Benz	66			500 SEC	126.044	1990
Mercedes Benz		53		500 SEL	126.037	1980–1989
Mercedes Benz	23			500 SEL	129.066	1989
Mercedes Benz	153			500 SEL		1990
Mercedes Benz	63			500 SEL	126.037	1991
Mercedes Benz		44		500 SL	107.046	1980–1989
Mercedes Benz	33			500 SL	129.066	1991
Mercedes Benz	60			500 SL	129.006	1992
Mercedes Benz		53		560 SEC	126.045	1986–1989
Mercedes Benz	141			560 SEC	126.045	1990
Mercedes Benz	333			560 SEC		1991
Mercedes Benz		53		560 SEL	126.039	1986–1989
Mercedes Benz	89			560 SEL	126.039	1990
Mercedes Benz		44		560 SL	107.048	1986–1989
Mercedes Benz		43		600	100.012	1978–1981
Mercedes Benz		43		600 Landaulet	100.015	1978–1981
Mercedes Benz		43		600 Long 4dr	100.014	1978–1981
Mercedes Benz		43		600 Long 6dr	100.016	1978–1981
Mercedes Benz	185			600 SEC Coupe		1993
Mercedes Benz	121			600 SL	129.076	1992

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Mercedes Benz		77		All other models except Model ID 114 and 115 with sales designations ''long,'' ''station wagon,'' or ''ambulance''.		1978–1989
Mercedes Benz	331			C Class		1994–1999
Mercedes Benz	277			CL500		1998
Mercedes Benz	370			CL500		1999–2001
Mercedes Benz	370			CL600		1999–2001
Mercedes Benz	380			CLK		1999–2001
Mercedes Benz	357			CLK320		1998
Mercedes Benz	401			E Class		1996–2002
Mercedes Benz	354			E Series		1991–1995
Mercedes Benz	278			E200		1995–1998
Mercedes Benz	207			E200		1994
Mercedes Benz	168			E220		1994–1996
Mercedes Benz	245			E250		1994–1995
Mercedes Benz	166			E280		1994–1996
Mercedes Benz	240			E320		1994–1998
Mercedes Benz	318			E320 Station Wagon		1994–1999
Mercedes Benz	169			E420		1994–1996
Mercedes Benz	304			E500		1995–1997
Mercedes Benz	163			E500		1994
Mercedes Benz			3	G-Wagon 300	463.228	1993
Mercedes Benz			5	G-Wagon 300	463.228	1994
Mercedes Benz			5	G-Wagon 300	463.228	1990–1992
Mercedes Benz			6	G-Wagon 320		1995
Mercedes Benz			18	G-Wagon 463		1999–2000
Mercedes Benz			11	G-Wagon 463		1996
Mercedes Benz			15	G-Wagon 463		1997
Mercedes Benz			16	G-Wagon 463		1998
Mercedes Benz			21	G-Wagon 463 LWB		2001
Mercedes Benz	392			G-Wagon 463 LWB		2002
Mercedes Benz			13	G-Wagon 463 LWB	V–8	1992–1996
Mercedes Benz			14	G-Wagon 463 SWB		1990–1996
Mercedes Benz	342			S Class		1995–1998
Mercedes Benz	395			S Class		1993
Mercedes Benz	325			S Class		1999
Mercedes Benz	387			S Class	W220	1999–2002
Mercedes Benz	85			S280	140.028	1994
Mercedes Benz	236			S320		1994
Mercedes Benz	267			S420		1994
Mercedes Benz	235			S500		1994
Mercedes Benz	371			S500		2000–2001
Mercedes Benz	297			S600		1995–1999
Mercedes Benz	371			S600		2000–2001
Mercedes Benz	185			S600 Coupe		1994
Mercedes Benz	214			S600L		1994
Mercedes Benz	343			SE Class		1992–1994
Mercedes Benz	343			SEL Class		1992–1994
Mercedes Benz	329			SL Class		1993–1996
Mercedes Benz			19	SL Class	R230	2001–2002
Mercedes Benz	386			SL Class	W129	1997–2000
Mercedes Benz	257			SLK		1997–1998
Mercedes Benz	381			SLK		2000–2001
Mitsubishi	13			Galant SUP		1989
Mitsubishi	8			Galant VX		1988
Mitsubishi	170			Pajero		1984
Moto Guzzi MC	403			California		2002
Moto Guzzi MC	118			Daytona		1993
Moto Guzzi MC	264			Daytona RS		1996–1998
Nissan	162			240SX		1988
Nissan	198			300ZX		1984
Nissan		75		Fairlady and Fairlady Z		1978–1979
Nissan			17	GTS, GTR (RHD)		1990–1999
Nissan	138			Maxima		1989
Nissan	316			Pathfinder		1987–1995
Nissan	139			Stanza		1987
Nissan		75		Z and 280Z		1978–1981
Peugeot	65			405		1989
Plymouth	353			Voyager		1996
Pontiac	189			Transport MPV		1993
Porsche	346			911		1997–2000

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Porsche	29			911 C4		1990
Porsche		56		911 Cabriolet		1984–1989
Porsche		56		911 Carrera		1978–1989
Porsche	165			911 Carrera		1995–1996
Porsche	52			911 Carrera		1992
Porsche	165			911 Carrera		1993
Porsche	103			911 Carrera		1994
Porsche		56		911 Coupe		1978–1989
Porsche		56		911 Targa		1978–1989
Porsche		56		911 Turbo		1978–1989
Porsche	125			911 Turbo		1992
Porsche	347			911 Turbo		2001
Porsche		59		924 Coupe		1978–1989
Porsche		59		924 S		1987–1989
Porsche		59		924 Turbo Coupe		1979–1989
Porsche	266			928		1991–1996
Porsche	272			928		1997–1998
Porsche		60		928 Coupe		1978–1989
Porsche		60		928 GT		1979–1989
Porsche		60		928 S Coupe		1983–1989
Porsche		60		928 S4		1979–1989
Porsche	210			928 S4		1990
Porsche	97			944		1990
Porsche		61		944 Coupe		1982–1989
Porsche		61		944 S Coupe		1987–1989
Porsche	152			944 S2 2 door Hatchback		1990
Porsche		61		944 Turbo Coupe		1985–1989
Porsche	116			946		1994
Porsche		79		All models except Model 959		1978–1989
Porsche	390			Boxster		1997–2001
Porsche	390			Boxster (before 9/1/2002)		2002
Porsche		20	GT2			2001
Porsche	388			GT2		2002
Rolls Royce	340			Bentley		1987–1989
Rolls Royce	186			Bentley Brooklands		1993
Rolls Royce	258			Bentley Continental R		1990–1993
Rolls Royce	53			Bentley Turbo		1986
Rolls Royce	291			Bentley Turbo R		1992–1993
Rolls Royce	243			Bentley Turbo R		1995
Rolls Royce	122			Camargue		1984–1985
Rolls Royce	339			Corniche		1978–1985
Rolls Royce		62		Silver Shadow		1978–1979
Rolls Royce	188			Silver Spur		1984
Saab	158			900		1983
Saab	270			900 S		1987–1989
Saab	219			900 SE		1990–1994
Saab	219			900 SE		1996–1997
Saab	213			900 SE		1995
Saab	59			9000		1988
Saab	334			9000		1994
Sprite			12	Musketeer Trailer		1980
Suzuki MC	111			GS 850		1985
Suzuki MC	287			GSF 750		1996–1998
Suzuki MC	208			GSX 750		1983
Suzuki MC	275			GSXR 750		1986–1998
Suzuki MC	227			GSXR1100		1986–1997
Toyota	308			Avalon		1995–1998
Toyota		63		Camry		1987–1988
Toyota	39			Camry		1989
Toyota		64		Celica		1987–1988
Toyota		65		Corolla		1987–1988
Toyota	252			Land Cruiser		1981–1988
Toyota	218			Land Cruiser		1990–1996
Toyota	320			Land Cruiser		1978–1980
Toyota	101			Land Cruiser		1989
Toyota	324			MR2		1990–1991
Toyota	302			Previa		1993–1997
Toyota	326			Previa		1991–1992
Toyota	328			RAV4		1996
Toyota	200			Van		1987–1988
Triumph MC	409			TSS		1982
Triumph MC	311			Thunderbird		1995–1999

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Body	Model year
Vespa MC	378			ET2, ET4		2001–2002
Volkswagen	237			Beetle Convertible		1978–1979
Volkswagen	306			Eurovan		1993–1994
Volkswagen	159			Golf		1987
Volkswagen	80			Golf		1988
Volkswagen	92			Golf		1993
Volkswagen	73			Golf Rally		1988
Volkswagen	149			GTI (Canadian)		1991
Volkswagen	274			Jetta		1994–1996
Volkswagen	148			Passat 4 door Sedan		1992
Volkswagen		42		Scirocco		1986
Volkswagen	284			Transporter		1988–1989
Volkswagen	251			Transporter		1990
Volvo	43			262C		1981
Volvo	87			740 Sedan		1988
Volvo	286			850 Turbo		1995–1998
Volvo	95			940 GL		1993
Volvo	132			945 GL		1994
Volvo	176			960 Sedan & Wagon		1994
Volvo	335			S70		1998–2000
Yamaha MC	113			FJ1200		1991
Yamaha MC			23	FJR 1300		2002
Yamaha MC	360			R1		2000
Yamaha MC	171			RD–350		1983
Yamaha MC	301			Virago		1990–1998

Issued on: September 23, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–24425 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 092303A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12 noon, local time, September 24, 2003, through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5727, fax: 727–570–5583, e-mail: *Mark.Godcharles@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached on September 23, 2003. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12 noon, local time, September 24, 2003, through June 30, 2004, the end of the fishing year. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and

were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 23, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–24387 Filed 9–23–03; 2:19 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 187

Friday, September 26, 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

Agricultural Marketing Service

7 CFR Part 1210

[Docket No. FV–01–704–610 REVIEW]

Watermelon Research and Promotion Plan; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Review of the Watermelon Research and Promotion Plan.

SUMMARY: This action summarizes the results of a review of the Watermelon Research and Promotion Plan (Plan) by the U.S. Department of Agriculture's, (Department), Agricultural Marketing Service (AMS) under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has determined that the Plan should be continued without change.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Research and Promotion, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–9915; Fax (202) 205–2800; or E-mail: *Daniel.manzoni@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Margaret Irby, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244; telephone (202) 720–9915; Fax (202) 205–2800; or E-mail: *margaret.irby@usda.gov*.

SUPPLEMENTARY INFORMATION: The Plan [7 CFR Part 1210] is authorized under the Watermelon Research and Promotion Act (Act), as amended, [7 U.S.C. 4901–4916].

Under the Plan, the National Watermelon Promotion Board (Board) collects assessments on watermelons produced in or imported into the United States to carry out coordinated programs of research, development, advertising, and promotion designed to strengthen, maintain, and expand domestic and foreign markets for watermelons.

AMS published in the **Federal Register** [63 FR 8014; February 18, 1999] its plan to review certain regulations, including the Plan, under the criteria contained in § 610 of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612]. An updated Plan was published in the **Federal Register** on January 4, 2002 [67 FR 525].

AMS published a notice of review and request for written comments on the Plan in the March 17, 2000, issue of the **Federal Register** [65 FR 14485]. No written comments were received.

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

Currently, there are 2,200 producers, 620 handlers, and 280 importers covered under the Plan. Producers of less than 10 acres and importers of less than 150,000 pounds of watermelons annually are exempt.

AMS provides federal oversight of the watermelon research and promotion program. The Plan is not unduly complex, and AMS has not identified any federal rules, or State and local regulations that duplicate, overlap, or conflict with the Plan. Over the years, regulation changes have been made to address industry operation changes and to improve program administration. The goal of these evaluations is to assure that the Plan and the regulations implemented under it fit the needs of the industry and are consistent with the Act. With the exception of a challenge concerning the constitutionality of assessments for promotion under the Plan, which the Department is currently defending, AMS has not received complaints about the Plan.

Based upon it review, AMS has determine that the Plan should be continued without change. AMS plans to continue working with the watermelon industry in maintaining an effective program.

Dated: September 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–24351 Filed 9–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206 and 210

RIN 1010–AD04

Federal Oil Valuation Proposed Rule

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Reopening of comment period.

SUMMARY: The MMS, an agency of the U.S. Department of the Interior, published on August 20, 2003, a Federal Oil Valuation Proposed Rule (68 FR 50087). This **Federal Register** document extends the comment period end date.

DATES: Submit written comments on or before November 10, 2003.

ADDRESSES: Address your comments and suggestions regarding this proposal to Sharron L. Gebhardt, Regulatory Specialist.

By regular U.S. mail: Minerals Management Service, Minerals Revenue Management, Records and Information Management Team, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; or

By overnight mail or courier: Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-mail: MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: ''Federal Oil Valuation Proposed Rule Comment'' and your name and return address in

your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Regulatory Specialist, Records and Information Management Team, Minerals Revenue Management, MMS, at telephone (303) 231–3211, fax (303) 231–3781, e-mail *sharron.gebhardt@mms.gov,* or P.O. Box 25165, MS320B2, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: All correspondence, records, or information received in response to this Notice are subject to disclosure under the Freedom of Information Act. All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552 (b)(4), the Indian Minerals Development Act of 1982 (25 U.S.C. 2103) and Department regulations (43 CFR 2).

Dated: September 12, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–24420 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–03–028]

RIN 1625–AA76

Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Green Canyon 645

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a safety zone around a petroleum and gas production facility in Green Canyon 645 of the Outer Continental Shelf in the Gulf of Mexico while the facility is being constructed and after the construction is completed. The construction site and facility need to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed rule would prohibit all vessels from entering or remaining in the specified area around the facility's location except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: Comments and related material must reach the Coast Guard on or before November 25, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA, 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–6271. Commander, Eighth Coast Guard District (m) 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 location listed above during the noted time periods.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Requests for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–03–028], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes the establishment of a safety zone around a petroleum and gas production facility in the Gulf of Mexico: Holstein, Green Canyon Block 645 (GC 645), located at position 27°19′17″ N, 90°32′08″ W. The proposed safety zone would be in effect while the facility is being constructed and after the construction is completed.

This proposed safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this rule it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the proposed safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairways nearest the proposed safety zone include the East-West Gulf of Mexico Safety Fairway and Louisiana Offshore Oil Port (LOOP) Shipping Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

BP Exploration & Production Inc., hereafter referred to as ''BP'' has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Holstein construction site and for the zone to remain in effect after construction is completed.

The request for the safety zone was made due to the high level of shipping activity around the site of the facility and the safety concerns for construction personnel, the personnel on board the facility after it is completed, and the environment. BP indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility during and after construction would result in a catastrophic event. The Holstein will be a high production oil and gas spar drilling facility, capable of producing approximately 100,000 barrels of oil per day and 90 million cubic feet of gas per

day, and manned with a crew of approximately 149 people.

The Coast Guard has reviewed BP's concerns and agrees that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident during and following the construction of Holstein warrants the establishment of this proposed safety zone. The proposed rule would significantly reduce the threat of allisions, oil spills and natural gas releases and increase the safety of life, property, and the environment in the Gulf of Mexico. This proposed rule is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Proposed Rule

The specific risk factors which necessitate a safety zone for the Holstein construction site and for a safety zone to remain in effect after the facility is completed are: (1) The construction site is located approximately 43 nautical miles southwest of the Louisiana Offshore Oil Port (LOOP) Shipping Safety Fairway (2) the facility will have a high production capacity of 100,000 barrels of petroleum oil per day and 90 million cubic feet of gas per day; (3) the facility will be manned with a crew of 149 people; (4) the facility will be a truss spar; and (5) the truss spar will be moored by a 16-line permanent mooring system.

Regulatory Evaluation

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

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

The impacts on routine navigation are expected to be minimal because the proposed safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Since the construction site for the Holstein is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area. This proposed rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Alternate routes are available for all other vessels impacted by this proposed rule. Use of an alternate route may cause a vessel to incur a delay of four to ten minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this proposed regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Add § 147.831 to read as follows:

§ 147.831 Holstein Safety Zone.

(a) *Description.* Holstein, Green Canyon 645 (GC 645), located at position 27°19′17″ N, 90°32′08″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon North American Datum 1983.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following: (1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: August 19, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 03–24366 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2001–10486]

Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent with request for comments.

SUMMARY: The Coast Guard announces its intent to prepare and circulate a Programmatic Environmental Impact Statement (PEIS) for the proposed regulatory action to establish a ballast water discharge standard. The intent of this standard is to establish the required level of environmental protection in preventing introductions and the spread of nonindigenous species from ballast water discharges. The Coast Guard is seeking public and agency input to develop the scope of this PEIS. The U.S. Environmental Protection Agency, U.S. Department of Interior's Fish and Wildlife Service, and U.S. Department of Commerce's National Marine Fisheries Service will be participating in the development of this PEIS as a Cooperating Agencies in accordance with Title 40, Code of Federal Regulations, § 1501.6.

DATES: Comments and related material must reach the Docket Management Facility on or before December 26, 2003.

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

(1) By mail to the Docket Management Facility (USCG–2001–10486), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

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

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

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

In choosing among these means, please give due regard to the recent difficulties and delays associated with the delivery of mail through the U.S. Postal Service to Federal facilities. Delivery methods 2–4 of those listed above are the preferred methods because security measures taken by the USPS and the USCG mail reception facilities may seriously damage or render unreadable comments sent via regular mail.

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

Electronic forms of all comments received into any of our dockets can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor unit, *etc*) and is open to the public without restriction. You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: For information concerning this PEIS, call Mr. Brad McKitrick, Office of Standards Evaluation and Development (G–MSR), U.S. Coast Guard, telephone 202–267–0995 or via e-mail *bmckitrick@comdt.uscg.mil.* If you have any questions on viewing or submitting

material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name and address and identify the docket number (USCG–2001–10486). You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard invites comments and suggestions on the proposed scope and content of the PEIS, as well as on the ideal means for notifying and involving the public. The Coast Guard will consider all comments received during the comment period.

Coast Guard's Transition to Department of Homeland Security

On March 1, 2003, the Coast Guard became an Agency under the Department of Homeland Security. As a result, the Secretary of the Department of Homeland Security assumed all Coast Guard duties once bestowed on the Secretary of the Department of Transportation.

Background

Under the National Invasive Species Act (NISA), Congress directed the Coast Guard to develop regulations to prevent the introduction and spread of nonindigenous species (NIS) in U.S. waters via ballast water discharge. According to the National Research Council (*see* reference 1), the uptake and discharge of ballast water is one of the largest pathways for the introduction and spread of aquatic NIS.

Living organisms can survive the process of being loaded into the ballast tanks, transported to different geographic locations, and released into a new environment (*i.e.* U.S. waters). The probability that NIS will survive once introduced into U.S. waters depends on a large number of poorly understood factors. While many of the transported NIS do not survive in U.S. waters, those that do may establish populations, spread beyond the point of introduction, and cause adverse changes in the recipient ecosystem. In many cases, there can be significant time lags between when a NIS becomes established as a reproducing population and when its distribution and abundance increase to the extent that it becomes a recognized pest.

Legislative and Regulatory History

Congress directed the Coast Guard to prevent the introductions of NIS from ballast water in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as reauthorized, and amended by the National Invasive Species Act of 1996 (NISA). In response to this direction, the Coast Guard established a program of mandatory requirements and voluntary guidelines in Title 33 of the Code of Federal Regulations part 151. Acceptable ballast water management (BWM) methods include mid-ocean ballast water exchange (BWE), holding ballast water onboard, discharging ballast water to an approved reception facility, or use of an alternative Coast Guard approved BWM method. BWM is mandated for vessels entering the Great Lakes and the Hudson River but is voluntary in the rest of the U.S. waters.

On May 1, 2001, we published a notice and request for public comments (66 FR 21807) on four conceptual approaches to setting ballast water treatment (BWT) standards and on approaches for assessing the effectiveness of BWT relative to BWE. The comments we received revealed a wide range of opinion, indicating the need for more discussion. Subsequently, on March 4, 2002, we published an advance notice of proposed rulemaking and request for comments (67 FR 9632) on the development of a BWT standard. The Coast Guard is incorporating the information we received in response to the advanced notice into the proposed rulemaking.

Over the past two years, the Coast Guard has used several venues to explore options for BWT standards. These include technical discussions organized by: (1) The International Maritime Organization's (IMO) Global Ballast Water Program (Globallast); (2) the Ballast Water and Shipping Committee of the U.S. Aquatic Nuisance Species Task Force; and (3) the U.S. Coast Guard's Research and Development Center.

Although the initial **Federal Register** publications were phrased in terms of BWT standards, the critical issue has always been the quality of the ballast water actually discharged from vessels. Therefore, beginning with this notice the emphasis will be on requirements related to ballast water discharges. This is also in line with the development of ballast water discharge standards internationally.

At the international level, in September 1995, the IMO identified the NIS threat as a major issue confronting the international maritime community. To address the issue, the IMO issued voluntary guidelines titled, ''International Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ships' Ballast Water and Sediment Discharges.'' The IMO Marine Environment Protection Committee (MEPC) is currently developing an international, legally binding, instrument to mandate ballast water management, which would include an international standard for ballast water discharge.

Scoping

Preliminary investigations to define the scope of environmental issues that may be relevant to the proposed regulatory action indicate that there is the potential for both beneficial and adverse effects to the environment. The Coast Guard, in general, believes the proposed regulatory action's effects on the environment will be significantly beneficial. The Council on Environmental Quality's (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) state that a significant environmental impact may exist even if an agency believes that the net balance of environmental effects are beneficial. Therefore, the Coast Guard has decided to prepare a PEIS.

The matter of establishing a ballast water discharge (BWD) standard for preventing the introduction of aquatic NIS involves two levels of environmental impact consideration: (1) An evaluation of the remaining probability of aquatic NIS introduction with the standard in place, as well as the associated potential for environmental consequences from introduction; and (2) the potential for environmental impacts from the use of particular management methods to meet the established standard. NISA calls for the use of environmentally sound [1]

[1] ''Environmentally sound'' methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of aquatic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures. The meaning of

ballast water management methods. Although no ballast water methods have yet been demonstrated to work effectively and consistently on a single vessel, let alone across a range of vessel types and operating conditions, a number of methods are being actively investigated. These methods currently include, among others, mid-ocean exchange; filtration; hydrocyclonic separation; ultraviolet radiation; ultrasonic impulses; oxidizing chemical biocides such as ozone, chlorine dioxide, hypochlorite, and various electrolytically produced ions; non-oxidizing organic chemicals; deoxygenation, and micro-scale shear forces. Some of these methods, such as oxidizing chemicals, have a well known potential to result in unwanted residuals and disinfection-by-products (DBPs), and it is even possible that the physical methods might result in unwanted changes to the quality of discharged water. These residuals, DPBs, and changes to water quality may have adverse environmental impacts. This PEIS will address the potential environmental impacts from the varying levels of remaining organisms in discharged ballast water that meets the BWD standard. However, when BWM methods are developed to meet the BWD standard, follow-on environmental analyses to determine environmental soundness will be conducted on each proposed method brought forward for approval or certification.

This PEIS is being prepared as a ''programmatic'' EIS since the proposed regulatory action meets CEQ's definition of ''a broad Federal action such as the adoption of agency programs or regulations'' (40 CFR 1502.4(b)). The PEIS will focus on an evaluation of the general environmental impacts that may result from either taking No Action (defined as not establishing BWD standards) or taking Action (defined as choosing and mandating a BWD standard from among several possible levels of management). The PEIS will be prepared in accordance with NEPA, CEQ's ''Regulations for Implementing the Procedural Provisions of NEPA,'' and the established Coast Guard NEPA procedures and policies, as specified in, ''National Environmental Policy Act: Implementing Procedures and Policy for Considering Environmental Impacts,'' COMDTINST M16475.1D.

The proposed regulatory action is part of a national program of regulations intended to prevent the introduction and spread of NIS via discharged ballast water. Other active projects in the program include a rule to impose penalties for noncompliance with mandatory aspects of ballast water management (68 FR 523) and a rule that makes the current voluntary BWM program mandatory (68 FR 44691). In order to determine the potential effectiveness of experimental technologies designed to treat ballast water for the removal of NIS aboard ship, the Coast Guard will promote the installation of experimental technologies aboard ships. Each project has been or will be analyzed under NEPA at the appropriate and meaningful point during Coast Guard planning and decision making.

The PEIS will provide general environmental information on the proposed action and alternatives to Coast Guard decision-makers, other agencies, and the interested and affected public, and help to determine whether implementing a regulatory BWD standard has the potential for significant environmental impacts. The PEIS will also look at the potential direct and indirect environmental impacts of each alternative including not implementing a BWD standard (the ''No action'' alternative). In addition to complying with NEPA, obtaining the information in the PEIS will ensure that the Coast Guard makes fully informed decisions before choosing a final course of action. The Coast Guard intends to continue to involve the public in these later associated actions, as appropriate, and will also prepare further, more specific, environmental analyses and documentation as necessary. The Coast Guard considers this PEIS to be a first-tier environmental review and may prepare subsequent NEPA analyses and documentation for future individual actions and their site-specific impacts if such analyses are not adequately covered by this PEIS.

The U.S. Environmental Protection Agency, U.S. Department of Interior's Fish and Wildlife Service, and U.S. Department of Commerce's National Marine Fisheries Service will be participating in the PEIS preparation as a Cooperating Agencies in accordance with Title 40, Code of Federal Regulations, § 1501.6.

Purpose of Proposed Action

The purpose of the proposed action is to fulfill the need for a ballast water discharge (BWD) standard to prevent the introduction and spread of NIS via discharged ballast water. In the future, this standard will be used to fulfill the Coast Guard authority under NISA to approve BWM methods that are effective at helping to prevent the introduction and spread of NIS via discharged ballast water.

Under NISA, the minimum for this discharge standard is ''at least as effective as ballast water exchange.'' It is difficult to determine the effectiveness of BWE due in part to the wide variety of vessel designs, ballast tank structures, and voyages. In addition, the Coast Guard believes that to prevent the introduction and spread of NIS, the ballast water discharge standard must relate to biological effectiveness. Therefore, the Coast Guard is working to develop a ballast water discharge (BWD) standard based on the level of protection needed to prevent introductions and spread of NIS.

The development of a BWD standard presents a complex challenge. Technologies for removing NIS from ballast water are in the early stages of development. These technologies need to be complementary with existing vessels as well as future vessel designs. The BWD standard to be achieved by these technologies must be environmentally sound. Development of this BWD standard requires close collaboration between government agencies, the scientific community, water treatment experts, the shipping industry, and a wide range of stakeholders.

Proposed Action

The proposed action is to establish a BWD standard that is effective in preventing the introduction and spread of NIS via discharged ballast water.

Need for Action

Under NISA, Congress mandated that the Coast Guard establish guidelines on BWM. Initially established as voluntary guidelines, Congress directed the Secretary of Transportation to make the actions prescribed in the guidelines mandatory if shipping industry compliance with found to be insufficient.

The next Congressionally required step is making the voluntary BWM guidelines into a mandatory BWM program. The Coast Guard published an NPRM on a mandatory BWM program for all U.S. waters on July 30, 2003 (68 FR 44691). This program would emphasize BWE, due to the lack of availability of other BWM methods. However, most existing vessels are not designed to conduct BWE, and in some cases, depending on vessel design, age, load, and sea conditions, the practice can be unsafe. Further, BWE is not an option for vessels moving along coastlines, since BWE in coastal areas may increase the risk of bioinvasions. Finally, even when conducted, the

''environmentally sound'' as described in this footnote pertains to all occurrences of the term in this notice.

effectiveness of BWE in removing NIS from ballast tanks can be quite variable. These drawbacks combine to make BWE less than desirable as a long-term approach to preventing introductions of NIS via ballast water discharges.

Recognizing that BWE is not a long-term solution, and that some vessels would not be able to consistently conduct effective BWE operations, Congress provided, as part of its recommended management actions, that vessel owners have the option of using BWM methods other than BWE. The Secretary of Homeland Security can approve such BWM methods if they are found to be at least as effective as BWE in reducing the risk of NIS introductions. The marine industry and scientific community are currently developing BWM methods and studying their biological efficacy and engineering performance. To comply with NISA and approve such BWM management methods as an alternative to BWE, the Coast Guard must develop objective criteria and administrative procedures for such approvals. The criteria include the quantitative treatment requirements that must be accomplished by treatment technologies. The first step to meeting the directives of NISA is to develop a BWD standard.

Alternatives

Reasonable alternatives that meet the established purpose and need will be evaluated and considered in detail. Currently the Coast Guard is examining a range of alternatives that vary in the degree to which the discharge of organisms would be prevented.

(1) *Alternative 1:* This alternative is the most stringent of all the alternatives in preventing the introduction of NIS. This alternative would comply with all current applicable environmental laws and other environmental mandates, and result in the discharge of no detectable viable organisms larger than 0.1 microns. This alternative would also require the removal or inactivation of all membrane-bound organisms (including bacteria), and most viruses, and would essentially require the sterilization of ballast water.

(2) *Alternative 2:* This alternative would fall between Alternative 1 and Alternative 3 in stringency. It would establish maximum acceptable discharge concentrations for various types of potential NIS—macrofauna, including fish and invertebrate zooplankton; heterotrophic and autotrophic protists (phytoplankton); and other microbes such as bacteria and viruses—to greatly reduce the risk of future introductions. Alternative 2 would also comply with all current applicable environmental laws and other environmental mandates. It would result in the discharge of no more than a particular number of viable individuals per liter of zooplankton greater than a cut-off size in microns and no more than a particular number of phytoplankton greater than a cut-off size, and discharge of a specified set of indicator microbes not to exceed specified concentrations. These standards could include the establishment of indicator species for use in approval and compliance testing. Concentration numbers have not been stated in the above description, as we are requesting comments from the public regarding the conceptual approach and the quantitative concentrations that should be specified. However the Coast Guard anticipates that the concentration number will fall between Alternative 1 and Alternative 3.

(3) *Alternative 3:* No Action. This alternative is the least stringent of the range of alternatives in preventing the introduction of NIS and would not establish a BWD standard. Instead, under the mandatory BWM program established according to the directives in NISA, it would be applicable to vessels equipped with ballast tanks entering U.S. waters after operating beyond the Exclusive Economic Zone (EEZ). As currently framed, the mandatory BWM program directs vessels to either conduct BWE or retain ballast water onboard or use a reception facility or another environmentally sound management method approved by the Coast Guard. Currently, few vessels have the ability to retain ballast water onboard and still conduct commercial activities, and no reception facility has been built to treat ballast water for removal of NIS. In addition, no environmentally sound methods to manage ballast water, other than BWE, have been approved by the Coast Guard. Thus, for the near future, the No Action alternative would mean that the primary mandatory BWM practice vessels would conduct is mid-ocean BWE when safe and feasible. Those vessel owners desiring to use some other ballast water management method would be required to demonstrate that the proposed method was at least as effective as BWE, on that vessel.

The Coast Guard is requesting input on any additional alternatives for analysis, any environmental concerns the public may have related to the alternatives for establishing a BWD standard, suggested analyses or methodologies for inclusion in the PEIS, and possible sources of relevant data or information.

Scope

The following environmental requirements have been tentatively identified for analysis in the PEIS and are presented to facilitate public comment during the scoping process of the PEIS. This list of requirements is neither intended to be all-inclusive nor to be a predetermined set of potential impacts. Additions to or deletions from the list of issues may occur as a result of the scoping process. The environmental requirements include the following:

(1) *Endangered or Threatened Species:* Potential impacts to endangered or threatened marine life and birds from each of the alternatives.

(2) *Essential Fish Habitat:* Potential effects to waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity from each of the alternatives.

(3) *Other Biological Habitats and Organisms:* Potential impacts to aquatic vegetation and benthic organisms from each of the alternatives.

(4) *Coastal and Marine Birds:* Potential impacts to coastal marine and birds from each of the alternatives.

(5) *Aquatic Resources:* Potential effects to marine mammals, sea turtles, and fisheries species from each of the alternatives.

(6) *Water Quality:* Potential impact to water quality resulting from each of the alternatives.

(7) *Air Quality:* Potential impact to air quality resulting from each of the alternatives.

(8) Great Lakes/Hudson River environment/resources.

(9) *Socio-economics:* Potential impact to recreational activities (including fishing), tourism, commercial fisheries, commercial infrastructure (including power plants and water treatment facilities), maritime commerce, and subsistence activities due to each of the alternatives.

(10) *Public Health and Safety:* Potential impacts to public health and safety associated with each of the alternatives.

Public Meetings

Five public scoping meetings will be held during the public comment period of this notice. Notice of those meetings will be published in the **Federal Register**. All appropriate comments provided at the public scoping meetings, both written and oral, will be considered in the preparation of the Draft and Final PEIS and will become part of the public record (*i.e.,* names, addresses, letters of comments, comments provided during the public meeting).

Once the Draft PEIS is published, the Coast Guard will hold additional public meeting(s). Notice of those meetings will be published in the **Federal Register**. All appropriate comments provided at the public meeting(s), both written and oral, will be considered in the preparation of the Final PEIS and will become part of the public record (*i.e.,* names, addresses, letters of comments, comments provided during the public meeting).

Reference

1. National Research Council. 1996. Stemming the Tide: Controlling Introductions of Nonindigenous Species by Ships' Ballast Water. National Academy Press, Washington, DC.

Dated: September 17, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–24138 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter 1

[FRL–7564–2]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Meeting of Negotiated Rulemaking Committee on all appropriate inquiry.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing an extension to the dates of an upcoming meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry.

DATES: As announced in the **Federal Register** on September 12, 2003 (68 FR 53687), a meeting of the Federal Advisory Committee tasked with negotiating a proposed rule on All Appropriate Inquiry is scheduled for October 14 and October 15, 2003. EPA is announcing that the Committee also will meet on October 16, 2003. The location for the meeting is provided below. Dates and locations of subsequent meetings will be announced in later notices.

ADDRESSES: The meeting will take place at the EPA East Building, 1201 Constitution Avenue NW., Washington, DC 20460. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on all three days, October 14, October 15, and October 16.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on October 14, 15, and 16, 2003, the Committee's agenda will include a continuation of substantive deliberations on the proposed rulemaking including discussions on recommendations for proposed regulatory language for addressing each of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii).

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on each day.

Dated: September 22, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.

[FR Doc. 03–24403 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7563–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the River Road Landfill Site release listing from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the River Road Landfill (Site) release listing from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substance Pollution Continency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before October 27, 2003.

ADDRESSES: Comments may be mailed to Donna Santiago (3HS22), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103, 215–814–3222, Fax 215–814–3002, e-mail *santiago.donna@epa.gov*. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site information repositories at the following locations: U.S. EPA Region III, Administrative Records, 1650 Arch Street, Philadelphia, Pennylvana 19103, 215–814–3157; and Buhl-Henderson Community Library, 11 North Sharpsville Avenue, Sharon, PA 16146.

FOR FURTHER INFORMATION CONTACT: Donna Santiago (3HS22), U.S. Environmental Protection Agency, Region III, 1650 Arch Street., Philadelphia, PA 19103, 215–814–3222, Fax 215–814–3002, e-mail *santiago.donna@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region III announces its intent to delete the River Road Landfill Site release, South Pymatuning Township, City of Hermitage, Mercer County, Pennsylvania, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on the deletion. EPA

identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant action.

EPA and the Commonwealth of Pennsylvania have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on the proposal to delete the listing of the Site release from the NPL for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the River Road Landfill Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

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

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

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

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

Even when the release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA is required, by statute or policy, to conduct a subsequent review of the site release at least every five years after the initiation of the remedial action at the site to ensure that the Site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release site deleted from the NPL, the deleted site may be restored to the NPL without application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the release Site from the NPL:

(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; however there will be continued operation and maintenance of the existing treatment scheme contained in the Post Closure Plan approved by the Pennsylvania Department of Environmental Protection (PADEP) in 1987 under the Pennsylvania Solid Waste Management regulations subject to modification approved by PADEP (2) The Pennsylvania Department of Environmental Protection concurred with the proposed deletion; (3) A notice has been published in the local newspaper and has been distributed to appropriate Federal, State, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repository.

For deletion of the release from the NPL, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period.

Deletion of the release from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a release from a site from the NPL does not preclude eligibility for future response actions.

A deletion occurs when the Regional Administrator places a final action in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this release from the NPL.

Site Background and History

The River Road Landfill (Site) is located in South Pymatuning Township, the City of Hermitage, Mercer County, Pennsylvania. The River Road Landfill is 37.5 acres in area and is situated on a parcel of land that is approximately 102 acres. The Site property surrounding the landfill is undeveloped and is vegetated mainly with grasses and some trees. The Site is bordered by River Road (Route 846) to the northwest and the Shenango River to the south. Industries are located across the Shenango River from the Site and upgradient along the River. Residential properties and wooded property are located to the northeast and west of the Site.

The northern portion of the Site is relatively flat and was used as a soil-borrow source during landfill-closure activities. In the southern portion of the Site, where the landfill is situated, the natural topography (beneath the landfill) is a gentle, south-southeasterly facing slope. Surface elevations range from a high of approximately 940 feet above mean sea level (amsl) in the north portions of the Site, to a low of approximately 860 feet amsl along the southern boundary of the Site along the Shenango River. Precipitation runoff from the landfill is directed via surface drainage channels to sedimentation basins located at the southwest and southeast corners of the landfill. The basins discharge to the River. Prior to the 1940s, land use in the Site area was primarily for agriculture. Industrial activity at the Site began in the 1940s when the Site was used for oil and gas production. In the late 1950s, the property was operated as a sand and gravel mine. The first landfilling at the Site began in early 1963. The landfill received sanitary and industrial waste. The facility accepted approximately 2,000 tons per week of these waste streams during its operational life.

In 1976, the Site was operated as the River Road Enterprises Sanitary Landfill. The reported method of operation in 1975 consisted of waste disposal by an area-fill method with refuse compaction, followed by daily cover consisting of six inches of clay borrowed from on-site. In 1978, PADEP granted technical approval for operations of the facility. In 1980, the landfill was purchased by Erie Disposal Company, currently Waste Management of Pennsylvania, Inc. (WMPA). WMPA constructed a subsurface landfill ground water dam on the south side of the landfill, which collected leachate and ground water. A final solid waste disposal permit for the landfill was issued by PADEP in 1984.

Starting in 1982, WMPA began upgrading and remediating the Site with soil-erosion and sediment-control systems. Additionally, the existing leachate lagoons were closed in 1983.

Further upgrades to the landfill leachate-collection system were added through 1988. The landfill stopped receiving waste in 1986. Closure activities were completed and certified in 1987. The River Road Landfill Certification and Post-Closure Plan was approved by PADEP in 1988.

History of Contamination

The first landfilling at the River Road Landfill began in 1963. From the beginning of operations until 1980, the landfill received municipal, residential, and industrial waste from area communities. Upon acquisition by WMPA in 1980, WMPA constructed a subsurface landfill leachate-collection system/ground water dam on the south side of the landfill, which collected leachate and ground water. Until 1983, the landfill leachate was temporarily stored on-site in a lagoon. In 1983, collected leachate and ground-water were discharged to the local Public Owned Treatment Works (POTW). The landfill leachate lagoon was closed in 1983. The landfill stopped receiving waste in 1986.

According to the Remedial Investigation (RI), leachate was the primary source of contamination at the River Road Landfill Site; low concentrations of volitale organic compounds (VOCs), semi-volitale organic compounds (SVOCs) and metals in landfill leachate and ground water were detected. The surface water runoff controls system, including drainageways and the basins themselves, were found to have trace concentrations of polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs). Metals concentrations were also low or within expected background ranges in the surface water control system, with the exception of chromium which was detected at an elevated level in an area located approximately 20 feet in length at the downstream end of the drainage system. Soils beneath the former landfill leachate collection pond contained extremely low levels of VOCs and were not considered a source of ground water contamination.

Low levels of VOCs were detected in ground water downgradient of the groundwater dam. Groundwater monitoring results since the RI have shown that VOCs have remained at extremely low levels. The RI states that only limited impacts to on-site groundwater have occurred, and no impacts to the River sediments can be conclusively linked to the landfill. Two private wells near the Site were sampled as part of the RI, and results indicated these wells were not affected by the landfill. There is no indication that ambient air quality at the Site has been impacted by landfill gas emissions.

Assessment of the nature and extent of contaminants present at the Site indicates that actual and threatened releases of hazardous substances from the Site have substantially been addressed by the implementation of the response actions already completed at the Site in connection with the PADEP approved Post Closure Plan.

Initial Response

Prior to placement on the NPL in 1989, various response activities were performed by WMPA including construction of a subsurface landfill leachate-collection system/ground water dam on the south side of the landfill; several system upgrades; hook-up of the landfill leachate collection system to the local POTW sewer line; and, the closing of the landfill leachate lagoon. The landfill stopped receiving waste in 1986 and a three-foot cap was placed on the landfill per the PADEP-approved closure plan in 1986 and 1987. EPA listed the landfill on the National Priorities List (NPL) on September 22, 1989.

EPA's Record of Decision (ROD) for the Site was signed in 1995. Since actual and threatened releases of hazardous substances from the Site had been extensively addressed by implementation of the response actions already completed at the Site, the selected remedy in the 1995 ROD identified continuation of the operation and maintenance of the Existing Treatment Scheme at the Site with the addition of Institutional Controls. The implemented and still operational, Existing Treatment Scheme includes: Continued operation and maintenance of the existing ground water/leachate collection system; continued maintenance of the PADEP-approved landfill cap and integrated surface water drainage system; the passive landfill gas-venting system currently installed at the landfill; continued maintenance of the existing ground water dam; continued maintenance of the fence; and, continuation of the existing monitoring program allowing for expansion, reduction or modification by PADEP or EPA. To further protect the public from exposure to hazardous substances, the selected remedy also called for deed restrictions to: (1) Prohibit the installation of new on-site potable wells and, (2) prohibit the excavation or disturbance of the soil cap which would result in exposing fill materials. A consent decree with EPA and the Responsible Parties for Remedial Design and Remedial Action was entered in February 2000.

Response Actions

The 1995 ROD identifies deed restrictions for the property and the operation and maintenance of the Existing Treatment Scheme at the Site as the selected remedy. To ensure compliance with the ROD and the PADEP Post-Closure Plan, routine inspections are performed on the following: landfill cover system, surface water drainage system, landfill leachate collection and conveyance system, groundwater monitoring wells and other Site features such as Site fencing, road, and parking areas. The landfill cover is inspected routinely to ensure its integrity and continued proper functioning. The landfill leachate-collection and conveyance system, including pumping and telemetry systems, is also routinely inspected to ensure proper operation. Monitoring wells are inspected during the quarterly sampling program for conditions such as functioning of well locks, as well as integrity of protective casing, visible portion of inner casing and concrete pad. The surface water drainage system (sedimentation basins, outlet structures, and channels) is also routinely inspected to ensure surface water management is performing as designed.

Deed restrictions for the Site property were placed in the deed by filing the restrictions with the Recorder Of Deeds of Mercer County, Pennsylvania. The deed restrictions prohibit excavation or disturbance of the soil cap which would result in exposing the fill materials, prohibit the installation of new on-site wells for use for domestic purposes including drinking water, and are designed to allow for beneficial use of the property, providing that the beneficial use would not pose a risk to human health or potential ecological receptors. The deed restrictions prohibit the building of residential construction on the Site. Buildings not intended for human living space (*e.g.*, barns, garages and similar building) are permitted. The deed restrictions are valid and binding at the Township, County and Commonwealth levels.

Applicable Deletion Criteria

The remedy selected for this Site has been implemented in accordance with the ROD. Therefore, no further response actions are necessary other than operation and maintenance of the Existing Treatment Scheme which will be completed under the PADEP Post-Closure Plan (or modification as required and/or approved by PADEP or EPA) and five-year reviews. The remedy

has resulted in the significant reduction of the long-term potential for release of contaminants, and, therefore, human health and potential environmental impacts have been minimized. EPA and the Commonwealth of Pennsylvania find that the remedy implemented continues to provide adequate protection of human health and the environment.

Dated: September 3, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–24410 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 414

[CMS–1476–CN]

RIN 0938–AL96

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects an error that appeared in the proposed rule published in the **Federal Register** on August 15, 2003 entitled ''Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004.''

FOR FURTHER INFORMATION CONTACT: Diane Milstead (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–20662 of August 15, 2003, we published the proposed rule to update the physician fee schedule for CY 2004 (68 FR 49030). We identified an error and we are correcting it in the Correction of Errors section below.

II. Correction of Error

In FR Doc. 03–20662 of August 15, 2003 we are making the following correction:

On page 49058 in section III. A. 6. ''Adjustments to RVUs to Match the New MEI Weights,'' the last sentence of this discussion, which is in the second column, incorrectly states that the effects of these adjustments are included in Addendum B of the proposed rule. We also omitted the word ''estimated'' when we discussed changes to the RVUs. Therefore, we are replacing the last two sentences of this section with the following: ''For this reason, we are proposing to reduce the physician work RVUs by an estimated 0.35 percent (0.9965) and the practice expense RVUs by an estimated 1.15 percent (0.9885) and increase the malpractice RVUs by an estimated 21.7 percent (1.217) to match the rebased MEI weights. We will include the effects of these adjustments in the physician fee schedule final rule and, as explained previously, we are not proposing a compensating adjustment to the conversion factor.''

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment prior to publication of a final notice. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the proposed regulations. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 24, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 03–24548 Filed 9–25–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 03–185; FCC 03–198]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on rules for digital low power television (''LPTV'') and television translator stations, and considers issues related to digital television booster stations. This proceeding marks the beginning of the digital television conversion for these services. The rules and policies that will be adopted as a result of this proceeding will provide the framework for this conversion.

DATES: Comments are due November 25, 2003; reply comments are due December 26, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Keith Larson, Media Bureau (202) 418–2607. For additional information concerning the information collection(s) contained in this document, contact Shirley Suggs at 202–418–1568, or via the Internet at *Shirley.Suggs@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Notice of Proposed Rule Making (''NPRM'')* in MB Docket No. 03–185, FCC 03–198, adopted August 6, 2003, and released August 29, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554. The *Notice* is also available on the Internet at the Commission's Web site: *http://www.fcc.gov.*

Synopsis

1. The *NPRM* contemplates that a digital TV translator station should be technically capable of rebroadcasting the entire incoming signal of its primary DTV broadcast station and producing a digital output signal that can be satisfactorily viewed on a receiver designed for the Commission's DTV transmission standard. The Commission seeks a definition for a digital TV translator consistent with this tentative conclusion. If the Commission were to extend the current analog translator definition, a digital TV translator would be a station operating for the purpose of retransmitting the programs and signals of a DTV broadcast station for reception by the general public, without significantly altering any characteristic of the original signal other than its frequency and amplitude. A digital TV translator would ''pass through'' the content and video format of a primary DTV station (*e.g.*, an HDTV input signal would be retransmitted as an HDTV output signal). The Commission seeks comment on how to define digital TV translators and, in particular, how allowances for local message insertions should be incorporated into the definition.

2. In a pending DTV proceeding, the Commission has asked whether the rules should permit TV translators to down-convert to analog format a signal originally broadcast by the parent station in digital format. The Commission seeks comment here on how these issues relate to the appropriate definition of a ''digital TV translator'' and what, if any, limitations should be imposed on the ability of a translator to alter the signal of the main station.

3. The Commission seeks comment on two transmission modes for digital TV translator rebroadcasts: (1) Heterodyne frequency conversion that simply shifts the signal information on the translator input channel onto a different TV output channel and (2) a ''regenerative'' mode that also processes the input signal to correct errors in the digital bit stream and mitigate signal distortion.

4. The *NPRM* seeks comment on the merits of local message insertion and the permissible nature and duration of such messages. Should digitally transmitted local messages be limited to the types of messages permitted for analog TV translators? The Commission also seeks comment on available technical means for local message insertion and transmission and related costs.

5. The *NPRM* requests comment on whether a digital translator operator should be permitted some flexibility to alter the content or video format of a DTV broadcast signal prior to retransmission, provided it has been given the consent of its primary DTV station. As one means, the *NPRM* explains permitting DTV translators to rebroadcast in the same output channel multiple video program streams of different broadcast stations, pursuant to arrangements with the involved TV station licensees, and seeks comment on the technical and economic feasibility of this concept.

6. The Commission also proposes to allow digital TV translators to receive DTV broadcast signals using any of the signal delivery means available to analog TV translators (*e.g.*, a TV translator relay or other suitable terrestrial microwave source).

7. The *NPRM* seeks comment on how to distinguish between digital LPTV and TV translator stations. The Commission questions whether it likely that digital LPTV and TV translator stations will serve different purposes. The Commission asks if a digital LPTV station be defined as a station that may originate programming more than 30 seconds per hour. How should this benchmark and the term ''program origination'' be interpreted given the differences between analog TV and DTV signals?

8. The Commission tentatively conclude that digital LPTV stations should be subject to the same minimum video program service requirement applicable to DTV broadcast and digital Class A stations. Accordingly, digital LPTV stations would be required to use some of their channel capacity to provide a free video programming service of at least NTSC technical quality, intended for reception by the general public.

9. The Commission also tentatively concludes that digital LPTV stations should be permitted to use their bit stream dynamically to transmit one or more digital programs in any DTV video format. Upon meeting the minimum video service requirement, the Commission believes that digital LPTV stations should be permitted to offer all of the ancillary and supplemental services, including subscription services, allowed for DTV and digital Class A TV broadcasters. They should also be permitted to enter into arrangements with outside parties with regard to ancillary and supplementary service operations in the manner permitted for DTV broadcasters. The Commission also asks: what circumstances, if any, would justify exclusion of a minimum free over-the-air digital video program service requirement?

10. The *NPRM* proposes to apply to digital LPTV stations the public interest related obligations to analog LPTV stations (*e.g.*, certain provisions for broadcast by candidates for political office).

11. To facilitate digital service opportunities, the *NPRM* proposes to make available for digital LPTV and translator stations VHF channels 2–13, inclusive, and UHF channels 14–59, inclusive (except channel 37 reserved for radio astronomy). The Commission proposes the use of these channels for both on-channel analog to digital station conversions and for new digital LPTV and TV translator stations and alternatively seeks comment on whether these channels should be made available only when applicants can demonstrate the unavailability of lower TV channels. These stations will be required to operate on a non-interfering basis to primary users of these channels and also protect earlier-authorized secondary users. Thus, digital LPTV and TV translator operations would not preclude or impede service from DTV stations or new primary services.

12. The Commission seeks comment on whether TV channels 60–69 (746 MHz to 806 MHz) should be made available during the DTV transition for new digital LPTV and translator stations and/or digital conversions of existing analog stations possibly excluding the channels reallocated for use by public safety entities.

13. The *NPRM* proposes the following protected signal contour values for digital LPTV and TV translator stations, as calculated from the F(50,90) propagation method in Section 73.625(b)(1) of the Commission's rules: 43 dBu for stations on channels 2–6, 48 dBu for stations on channels 7–13, and 51 dBu for stations on channels 14–69.

14. The *NPRM* proposes to base standards for accepting digital LPTV and TV translator station application proposals on D/U protection ratios for analysis of predicted interference. The Commission proposes to apply to digital LPTV and translator interference analysis the co-channel D/U ratios for ''DTV-into-analog TV,'' ''Analog TV-into-DTV'' and ''DTV-into-DTV'' given in Section 73.623(c)(2) and the DTV-to-DTV co-channel adjustment formula and analog-to-DTV co-channel adjustment table given in 47 CFR Section 73.623(c)(3). The Commission proposes that analog LPTV and TV translator station proposals protect 1st adjacent channel digital LPTV and TV translator stations based on the following D/U ratios, the values given in our DTV rules: ''Lower analog TV-into-DTV'' -48 dB and ''Upper analog TV-into-DTV'' -49 dB. The *NPRM* seeks comment on D/U ratios for first adjacent channel protection from digital LPTV and translator stations.

15. In this proceeding, the Commission will adopt a methodology for interference analysis to be used in the application process for accepting digital LPTV and TV translator applications. One possible choice would be the contour protection approach now used to evaluate analog LPTV and TV translator station proposals. As an alternative to the contour overlap approach, the Commission contemplates basing application acceptance on its more flexible DTV interference prediction methodology possibly tailored to reflect the characteristics of transmitting antennas typically used by LPTV and translator stations.

16. The *NPRM* seeks comments on proposals and on issues related to co-located adjacent channel operations involving digital LPTV and TV translator stations. The Commission also seeks comment on any other technical means for demonstrating interference avoidance that could facilitate channel availability for digital LPTV and TV translator service without compromising

the interference protection rights of other stations.

17. The *NPRM* proposes to subject LPTV, Class A, TV translator and TV booster digital stations to the requirements of 47 CFR Section 73.1030 regarding interference protection to radio astronomy research and certain receiving installations. The Commission also requests comment on whether it might be appropriate to subject digital low power television stations to those requirements only with regard to the more sensitive operations of the radio astronomy observatories at Green Bank, West Virginia and Arecibo, Puerto Rico. The *NPRM* seeks comments on the means of interference protection for land mobile radio operations on TV channels 14–20 in certain metropolitan areas.

18. Assuming the Commission adopts the contour values it proposed for digital LPTV and TV translator stations, it invites comment on the adequacy of certain digital effective radiated power limits. The Commission also seeks comment on the appropriate out-of-channel emission limitations for digital LPTV and TV translator stations. The Commission also seeks to establish the minimally necessary standards for the transmitting equipment that will be used for digital low power operations, primarily related to interference avoidance and the process for addressing compliance with these standards: either FCC certification or verification procedures.

19. Assuming the Commission adopts a certification requirement, its questions under what circumstances, if any, should it permit LPTV or TV translator equipment certified for analog operation to be used for digital transmissions?

20. The *NPRM* invites comment on whether to require minimum hours of operation for digital TV translator and/or LPTV stations and, if so, how should the Commission should structure the requirement. The Commission also proposes to apply the provisions for unattended analog station operation to digital LPTV and TV translator operations.

21. The *NPRM* seeks comment on appropriate means for digital LPTV and TV translator station identification and related costs of compliance. The Commission seeks comment on station identification requirements for digital LPTV stations equipped to originate local programming.

22. The *NPRM* proposes to authorize the digital on-channel conversion of a licensed analog LPTV or TV translator station, or a station holding a construction permit for such a facility, as a ''minor'' facilities change provided: (1) The proposed digital facility would not involve a channel change not related to channel displacement, and (2) the protected digital signal contour of the proposed facility would overlap some portion of the protected contour based on the station's analog authorization. Consistent with the rules for LPTV minor change applications, the Commission proposes to grant ''digital conversion'' applications on a first-come, first-served basis under the current processing procedures.

23. The Commission asks whether the auction exemption provisions in Section 309(j)(2)(B) of the Communications Act apply to mutually exclusive applications for new LPTV and TV translator digital stations or where such applications are mutually exclusive with other applications in the LPTV or Class A TV services. Should the Commission determine that the auction exemption does apply, it seeks comment as to an alternative proposal for resolving mutually exclusive applications for low power and television translator digital stations.

24. The *NPRM* tentatively concludes that the Commission should place a high priority on facilitating the digital transition of existing LPTV and TV translator service. It seeks comment on the following approach for accepting applications for construction permits for new digital LPTV and TV translator stations. Under this approach, the Commission would first issue a Public Notice announcing a digital-only application filing window with filing eligibility limited to LPTV, TV translator and Class A TV licensees and permittees (''incumbents''). Class A TV licensees and permittees would be filing for digital authorizations in the low power television service. This window would not be geographically restricted. At some time after processing the applications received in the initial window, the Commission would announce the commencement of a separate filing procedure referred to as ''rolling one-day filing windows.'' In this first-come-first-served filing procedure, the applicant eligibility would not be restricted. As an application acceptance condition, proposed facilities would be required to protect those in all earlier-filed applications. Applications having predicted interference conflicts with other applications filed in such a window on the same day would be considered to be mutually exclusive and whether incumbents authorized channels through this window should be required to surrender an equal number of channels at the end of the DTV transition period or some other time. The *NPRM* also asks if the Commission should continue to accept applications for new analog LPTV and TV translator stations; for example, only in those geographic areas with the greatest unmet TV service needs.

25. The *NPRM* seeks comment on how to structure application filing policies and procedures to appropriately balance our digital service objectives and analog LPTV service needs. The Commission invites comment on the merits of an initial digital-only application filing window limited to incumbent LPTV, TV translator, and Class A TV licensees and permittees. The Commission asks whether it should limit the number of applications that could be filed by a single entity.

26. The *NPRM* seeks comment on whether the licensing approach detailed in Section 336(f)(4) of the Communications Act is the only means by which the Commission might award additional digital channels to Class A and translator stations or whether the Commission may use the ''all-secondary'' channel approach proposed in the item and defer the implementation of the 336(f)(4) licensing scheme until a later point in the digital transition.

27. Section 309(j)(14)(A) of the Communications Act provides that the Commission may not renew a license for analog broadcast television service for a period extending beyond December 31, 2006 or later if certain conditions apply. Section 336(f)(4) of the Act provides that Class A TV stations (formerly LPTV stations) and TV translator stations shall not be required to convert to digital operation until the end of the DTV transition period. The Commission seeks comment on whether these provisions apply to analog authorizations in the low power television service.

28. The *NPRM* proposes to apply to digital LPTV and TV translator stations the construction period provisions applicable to analog LPTV and TV translator stations.

29. The *NPRM* seeks comment on whether to establish a digital booster class of station in our LPTV service rules and, if so, what requirements should govern the authorization and operation of such stations including who should be eligible to operate such stations. The Commission asks: should digital boosters be limited to improving signal coverage within a station's protected signal contour as is the case for analog TV boosters (*i.e.*, by requiring the service contour of a digital booster to be encompassed by the service contour of the station whose signal is being retransmitted)? Should digital

boosters also be permitted to deliver programming to communities or areas located beyond the protected area of the station whose signal is being retransmitted (*i.e.*, where technically feasible, as an alternative delivery mechanism to a digital TV translator)? Could such use of boosters enable more efficient spectrum use (*e.g.*, in areas of hilly or mountainous terrain where spectrum opportunities are limited due to a high density of analog translators)?

30. The Commission also asks if it should apply to digital boosters the interference protection methodology and technical standards we adopt for digital LPTV and TV translator stations (*e.g.*, protected signal contour, effective radiated power limits, emission mask and interference protection D/U ratios and methodology, excluding co-channel protection of the station whose signal is retransmitted by the booster.

31. The *NPRM* seeks comment on an appropriate call sign suffix for digital TV translator and LPTV stations. The Commission also seeks comment on what fees should apply to digital LPTV and TV translator stations. The Commission also proposes extending broadcast auxiliary service (BAS) eligibility provisions to permit digital LPTV and TV translator stations to operate on the same bands and for the same purposes as analog LPTV and TV translators, subject to the BAS rules governing digital operations. The Commission also seeks comment on whether a particular digital service contour would be more appropriate with regard to defining the area for locally produced programming of digital Class A TV stations.

32. The *NPRM* also seeks comments on a request by Association of Public Television Stations, the Public Broadcasting Service and the Corporation for Public Broadcasting that the Commission: (1) Facilitate the relocation of analog translators that provide a noncommercial service; (2) facilitate the transition of existing or relocated analog noncommercial educational translators to digital operation; and (3) make additional technical modifications to its rules to support the licensing of translators and repeaters.

Administrative Matters

33. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 25, 2003 and reply comments on or before December 26, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998). Written comments by the public on the proposed information collections are due November 25, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 25, 2003.

34. Comments filed through ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

35. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room, 2–C207, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using MS Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket No. 02–113, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Vistronix, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554.

36. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Shirley Suggs, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Shirley.Suggs@fcc.gov,* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jeanette_I._Thornton@omb.eop.gov.*

37. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force Web site: *http://www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

38. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at

(202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov.*

39. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

40. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM.* Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM,* but they must have a distinct heading designating them as responses to the IRFA.

41. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in paragraph 16. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

42. As described in the *NPRM,* the proposed rules are intended to permit LPTV, television translator, and television booster stations to transition to digital service. Provisions in the *NPRM* may also facilitate the digital transition of Class A TV stations. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions, including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV Allotments. The rules proposed in the Notice are a fundamental part of the Commission's effort to establish rules to help effectuate the transition of the nation's television broadcast service from analog to digital format.

43. The proposed rules are intended to meet the need recognized by the Commission to provide flexible and affordable opportunities for low power digital service, both through the digital conversion of existing analog service and, where spectrum is available, new digital stations. The Commission's goals are to hasten the transition of LPTV and TV translator stations to digital operations, and to do so in a manner that minimizes disruption of existing service to the consumers served by analog LPTV and translator stations. The following proposals in the Notice serve as examples of how the Commission seeks to realize these objectives. As one example, the *NPRM* seeks comment on flexible means for digital translator operations, including combining the signals of two or more DTV broadcast station signals on a translator's transmitted output channel, provided such operations are technically and economically feasible. The *NPRM* also proposes to permit digital LPTV stations to provide ancillary and supplementary services upon meeting a minimum video program service requirement, and seeks to impose as few interference requirements on digital low power service stations as necessary to ensure interference-free operation. In addition, to expedite authorization of service, the *NPRM* proposes that LPTV and translator operators be permitted to convert to digital on their existing analog channels by applying for a minor facilities change at any time. The *NPRM* also seeks comment on filing procedures for new digital stations that would facilitate the transition of existing LPTV and translator service and quicken the authorization of digital service.

B. Legal Basis

44. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 303, 307, 309 and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

45. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

46. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

47. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

48. *Class A TV, LPTV, TV translator, and TV booster stations.* The proposed rules and policies would apply to licensees of LPTV, TV translator, and TV booster stations, and to potential licensees in these television services. Certain rules and policies would also apply to licensees of Class A TV stations. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this category are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

49. Currently, there are approximately 2,100 licensed LPTV stations, 600 licensed Class A stations, 4,700 licensed TV translators and 11 TV booster stations. According to Commission staff review of the BIA Publications, Inc.,

Master Access Television Analyzer Database, virtually all LPTV broadcast stations, including LPTV stations that have converted to Class A status, have revenues of less than $12 million. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $12 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

50. *Cable and Other Program Distribution.* Cable systems often receive the television service transmitted over the cable system from a TV translator or LPTV station. Thus, cable systems may also be affected by the rules proposed in the Notice. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

51. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

52. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

53. *Direct Broadcast Satellite (''DBS'') Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

54. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. As noted, supra, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

55. *Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS'').* MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS services. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

56. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. In addition, MDS includes licensees of stations authorized prior to the auction. As noted, the SBA has

developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, using the SBA small business size standard, we find that there are approximately 850 small MDS providers.

57. The SBA definition of small entities for Cable and Other Distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

59. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for Cable and Other Program Distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. As noted, supra, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

60. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $ 12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

61. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could affect manufacturers of digital transmitting and receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

62. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify

as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

63. This *NPRM* contains additional reporting and recordkeeping requirements. While the requirements proposed in the *NPRM* could have an impact on LPTV, Class A, TV translator, and TV booster licensees, and potential licensees in these services, we believe such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

64. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

65. None.

66. **Authority.** This *NPRM* is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and Section 202(h) of the Telecommunications Act of 1996.

Ordering Clauses

67. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

68. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24328 Filed 9–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 091503E]

RIN 0648–AO63

Fisheries of the South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Fishery Management Plan

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

ACTION: Notice of availability of a fishery management plan for the dolphin and wahoo fishery of the Atlantic (FMP); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) has submitted the subject FMP for review, approval, and implementation by NMFS. If approved, the FMP would establish the management unit and stock status criteria for dolphin and wahoo, permitting and reporting requirements, restrictions on the harvest and sale of dolphin and wahoo, designations of essential fish habitat (EFH) and habitat areas of particular concern (HAPCs), and a framework procedure that would allow implementing certain regulations through an abbreviated rulemaking process.

DATES: Written comments must be received on or before November 25, 2003.

ADDRESSES: Comments on the FMP must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the FMP, which includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, should be sent to the South Atlantic Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; fax: 843–769–4520; e-mail: *safmc@safmc.net*.

Requests for copies of a Supplemental Economic Analysis, Regulatory Impact Review, and Regulatory Flexibility Act Analysis, prepared by NMFS, should be sent to the Fisheries Economics Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment.

In developing this FMP, the SAFMC adopted a precautionary and risk-adverse approach to management. The SAFMC is concerned about rising catches in both the recreational and commercial fisheries, and with this FMP, intends to stabilize the fisheries at their current levels.

The FMP would establish the management unit for dolphin and wahoo as that portion of the stocks found in the exclusive economic zone (EEZ) along the U.S. Atlantic coast from Maine through the east coast of Florida. Several scientific studies have concurred that there is a single stock of dolphin ranging throughout the U.S. Atlantic, Gulf of Mexico and Caribbean region; a similar single stock hypothesis is also assumed for the widely dispersed, but poorly described, wahoo stock. Nevertheless, the National Standard Guidelines, at 50 CFR 600.320, suggest that more restrictive alternative management units may be justified if complementary management is planned for other geographic areas or if the unmanaged portions of the stocks are immaterial to proper management within the area under consideration for the alternate management unit,

especially if designated alternate management units are specifically relevant to the FMP's objectives.

Addressing social and economic issues only occurring in the Atlantic region are the SAFMC's primary objectives in the FMP. The SAFMC is not attempting to rectify a biological problem with the stocks which would require management throughout its range; neither stock is overfished nor approaching an overfished condition because of overfishing. The SAFMC seeks to: (1) Minimize the potential for localized reductions in fish abundance, which can have economic and social impacts; (2) minimize market disruptions from large landings by all sectors; (3) minimize conflicts and competition between recreational and commercial user groups; and (4) optimize social and economic benefits by recognizing and maintaining the historical importance of the recreational fishery. Thus, the alternative management unit is appropriate.

The FMP would establish stock status criteria, including maximum sustainable yield (MSY), optimum yield, and overfishing definitions. Overfishing would be defined as the rate of harvest that compromises the stock's ability to produce MSY on a continuing basis. The status of the stocks would be monitored by designating both a maximum fishing mortality threshold to determine whether overfishing was occurring and a minimum stock size threshold to determine whether the stocks were overfished.

To maintain a healthy stock and to accomplish the social and economic goals and objectives, the FMP would establish numerous harvesting restrictions and requirements. Dealers, vessels, and operators would be required to obtain Federal permits to participate in the fishery and to report their catches and landings. The sale of dolphin and wahoo would be prohibited except by those vessels that possess appropriate state and Federal commercial permits. Harvests would be restricted in both the recreational and commercial sector. The FMP would establish daily recreational bag limits, 10 for dolphin and 2 for wahoo, and a daily 60–fish boat limit for dolphin (excluding headboats). A commercial trip limit of 3,000 pounds (1,361 kg) north of 31° N. latitude and 1,000 pounds (454 kg) south of 31° N. latitude would be established for dolphin, with a regionwide 500 pound (227 kg) trip limit for wahoo, with no transfer at sea allowed for either dolphin or wahoo. A minimum size limit for dolphin of 20 inches (50.8 cm) fork length would be established off Florida and Georgia, with no minimum size limit north of Georgia. No size limit is proposed for wahoo. The use of surface and pelagic longlines to fish for dolphin or wahoo would be prohibited within any highly migratory species time or area closure within the FMP's area of jurisdiction. A fishing year of January 1 through December 31 would be established, and allowable gears in the fishery would include hook-and-line, bandit, handlines, longlines, and spearfishing (including powerheads).

To maintain the status quo of effort in the fishery, the FMP would establish a non-binding cap in the allocation between recreational and commercial sectors. The commercial sector would be limited to 1.5 million pounds (680,400 kg) or 13 percent of the total landings, whichever is greater. The recreational sector would be limited to 87 percent of the total landings. This allocation is based on the average contribution of each sector during the 1994 through 1997 time period. Should the contributions of each sector begin to shift, the SAFMC would review the existing data and evaluate the need for additional regulations to maintain the established allocations. A framework procedure would be established to allow the implementation of certain future regulations through an abbreviated rulemaking process.

To ensure that adequate habitat is available for maintaining healthy stocks of dolphin and wahoo, the SAFMC would designate several areas as EFH, including the Gulf Stream where it occurs in the EEZ, the Charleston Gyre, and pelagic *Sargassum* habitat. Within these designated areas of EFH, HAPCs would be designated at specific geographic regions located between North Carolina and Florida.

A proposed rule that would implement measures outlined in the FMP has been received from the SAFMC. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 25, 2003 whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 22, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–24391 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 187

Friday, September 26, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before November 25, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau of Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0506.

Form No.: AID 1420–50.

Title: Vendor Database (formerly known as ACRIS) Instruction Books for the Organization Profile.

Type of Review: Renewal of Information Collection.

Purpose: USAID procuring activities are required to establish bidders mailing lists to assure access to sources and to obtain meaningful competition (41 CFR Section 1–2.205). In compliance with this requirement, USAID's Office of Small and Disadvantaged Business Utilization/Minority Resource Center has responsibility for developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the USAID procuring activities. (AIDAR 719.271–2(b)(4)).

Annual Reporting Burden:

Respondents: 1,000.

Total annual responses: 1,000.

Total annual hours requested: 250 hours.

Dated: September 22, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–24355 Filed 9–25–03; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Food Stamp Program: State Issuance and Participation Estimates—Form FNS–388

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection would extend a currently approved collection under OMB No. 0584–0081 for the Food Stamp Program for the form FNS–388, State Issuance and Participation Estimates.

DATES: Comments on this notice must be received by November 25, 2003 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

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.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Form FNS–388, State Issuance and Participation Estimates.

Title: Form FNS–388, State Issuance and Participation Estimates.

OMB Number: 0584–0081.

Expiration Date: November 2003.

Type of Request: Extension of a currently approved collection.

Abstract: Section 18(b) of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2027(b)) limits the value of allotments paid to food stamp households to an amount not in excess of the appropriation for the fiscal year. If allotments in any fiscal year would exceed the appropriation, the Secretary of Agriculture is required to direct State agencies to reduce the value of food stamp allotments to the extent necessary to stay within appropriated funding limits. Timely State monthly issuance estimates are necessary for FNS to ensure that it remains within the appropriation, to timely request a supplemental appropriation if appropriate, and to reduce allotments if a supplemental appropriation is not provided. While benefit reductions have never been ordered in the past under section 18(b), nor are they anticipated based on current data, the Department

must continue to monitor actual program costs against the appropriation.

Title: Form FNS–388, State Issuance and Participation Estimates.

Section 11(e)(12) of the Act (7 U.S.C. 2020(e)(12)) requires that the State Plan of Operations shall provide for the submission of reports required by the Secretary of Agriculture. State agencies are required to report on a monthly basis on FNS–388, State Issuance and Participation Estimates, estimated or actual issuance and participation data for the current month and previous month, and actual participation data for the second preceding month. The FNS–388 report provides the necessary data for an early warning system so that the Department may stay within its appropriation.

State agencies in general only submit one Statewide FNS–388 per month. The exception is that State agencies which choose to operate both a coupon system and an electronic benefit transfer (EBT) system, or which choose to operate an approved alternative issuance demonstration project such as a cash-out system, submit a separate report for each type of issuance system. State agencies are converting from coupons to EBT. In June 2003, 52 State agencies operated an EBT system and 49 operated EBT statewide. With almost all States agencies now EBT and with the single remaining State agency moving from paper coupons to EBT by October 2004, few State agencies will be expected to temporarily submit more than one FNS–388 report per month at any one time. With State agency automated information systems, the separate report for a secondary issuance system or an alternative issuance demonstration project should have a negligible impact on the burden.

In addition, State agencies are required to submit a project area breakdown on the FNS–388 of issuance and participation data twice a year. This data is useful in identifying project areas that are required to do photo identification of heads of households or to operate fraud detection units in accordance with the Act.

Beginning July 1993, State agencies were allowed to submit the FNS–388 data electronically to the national database files stored in FNS' Food Stamp Program Integrated Information System in lieu of a paper report. The voluntary changeover from paper to electronic reporting of FNS–388 data by States was done as part of FNS' State Cooperative Data Exchange Project. This project is being expanded over time as more FNS forms are transferred to electronic formats for State data entry. As of May 2003, a total of 46 State agencies submit the FNS–388 data electronically and 7 State agencies submit paper reports.

Respondents: State agencies that administer the Food Stamp Program.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent:

Form FNS–388: 53 State agencies 12 times a year.

Form FNS–388A: 53 State agencies twice a year.

Estimate of Burden:

Form FNS–388: The State agencies submit Form FNS–388 10 times per year at an estimate of 5.60 hours per respondent, or 2,970 hours annually for all respondents. The remaining two FNS–388 submissions with a public assistance (PA) and non-public assistance (NA) caseload breakout are covered under the FNS–388A twice a year submissions (see below).

Form FNS–388A: The State agencies submit a more detailed FNS–388 (with PA and NA breakout) twice a year and FNS–388A project area breakdown twice a year at an estimate of 14.8 hours per respondent, or 1,572 hours annually for all respondents.

Estimated Total Annual Burden on Respondents: The annual reporting and recordkeeping burden for OMB No. 0584–0081 is estimated to be 4,542 hours.

Dated: September 10, 2003.

Roberto Salazar,

Administrator.

[FR Doc. 03–24353 Filed 9–25–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the National Forests in Mississippi

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Regional Forester for the Southern Region gives notice of the agency's intent to prepare an Environmental Impact Statement (EIS) for revision of the Forest Land and Resource Management Plan (Forest Plan) for the National Forests in Mississippi. According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10–15 year cycle. The planning process will be initiated under the 1982 Forest Service planning regulations (36 Code of Federal Regulations 219 *et seq.,* as is provided for at 36 CFR 219.35(b) of the current regulations). The existing Forest Plan for Mississippi was approved on September 16, 1985. On December 14, 1999, a Notice of Intent to revise the Forest Plan was published in the **Federal Register** (FR 69686, December 14, 1999). This 2003 Notice of Intent updates the projected schedule for Forest Plan revision and provides an opportunity for additional public comments. The agency invites written comments and suggestions from American Indian tribes, Federal agencies, State and local governments, individuals and organizations on the scope of the analysis to be included in the draft EIS (DEIS) (40 CFR 1501.7).

This Notice of Intent affects the following counties in Mississippi: Adams, Amite, Benton, Chickasaw, Choctaw, Copiah, Forrest, Franklin, George, Greene, Harrison, Jackson, Jasper, Jefferson, Jones, Lafayette, Lincoln, Marshall, Newton, Oktibbeha, Pearl River, Perry, Pontotoc, Scott, Sharkey, Smith, Stone, Tippah, Union, Wayne, Wilkinson, Winston, and Yalobusha counties in Mississippi.

DATES: Comments concerning the scope of the analysis should be received on or before 45 days from publication of this Notice. The agency expects to file the draft EIS with the Environmental Protection Agency and make it available for public comment in November, 2005. The agency expects to file the final EIS in November, 2006. See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Submit written comments to Forest Plan Revision, National Forests in Mississippi, 100 West Capitol St., Suite 1141, Jackson, MS 39269. Electronic mail should include ''Forest Plan Revision'' in the subject line and be sent to: *Mississippi_Plan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: National Forests in Mississippi: Planning Team Leader Jeff Long (phone 601–965–4391; TTY 601–965–6038). Electronic mail should include ''Forest Plan Revision'' in the subject line and be sent to: *Mississippi_Plan@fs.fed.us.* Information about Forest Plan revision and future opportunities to participate will be posted at the following Web site:*http://www.southernregion.fs.fed.us/mississippi/.*

Responsible Official: The Regional Forester for the Southern Region, located at 1720 Peachtree Road, NW., Atlanta, Georgia 30309, is the Responsible Official.

SUPPLEMENTARY INFORMATION:

I. Background Information

A Notice of Intent to revise the 1985 Forest Plan for the National Forest in Mississippi was published in the **Federal Register** in 1999 (FR 69686, December 14, 1999). However, Forest Plan revision efforts for the National Forests in Mississippi were delayed due to changes in national planning priorities and reduced funding. This (revised) Notice of Intent provides public notice that the revision for the National Forests in Mississippi is again underway, updates the December 1999 projected schedule for Forest Plan revision, and affords an opportunity for additional public comments on the scope of the analysis to be included in the draft EIS.

The Forest Plan covers the six proclaimed National Forests in Mississippi; Bienville, Delta, De Soto, Homochitto, Holly Springs and Tombigbee National Forests. Decisions made in the Forest Plan identify actions that may take place but do not represent a commitment by the agency to implement site-specific projects. Forest Plan decisions do not normally make any irreversible or irretrievable commitment of resources. Site-specific decisions, which may involve irreversible or irretrievable commitment of resources are reserved for the second stage decisions which follow Forest Plan decisions.

The following decisions are made in a Forest Plan:

(1) Establishment of the forest-wide multiple-use goals and objectives (36 CFR 219.11(b)).

(2) Establishment of forest-wide management requirements (36 CFR 219.13 to 219.27).

(3) Establishment of multiple-use prescriptions and associated standards and guidelines for each management area (36 CFR 219.11(c)).

(4) Determination of land that is suitable for the production of timber (16 U.S.C. 1604(k) and 36 CFR 219.14).

(5) Establishment of allowable sale quantity for timber within a time frame specified in the plan (36 CFR 219.16).

(6) Establishment of monitoring and evaluation requirements (36 CFR 219.11(d)).

(7) Recommendation of roadless areas as potential wilderness areas (36 CFR 219.17).

(8) Where applicable, designation of those lands administratively available for oil and gas leasing; and when appropriate, authorizing the Bureau of Land Management to offer specific lands for leasing (36 CFR 228.102(d) and (e)).

The authorization of site-specific activities within a plan area occurs through project decision-making, the second state of forest planning. Project decisions must comply with National Environmental Policy Act (NEPA) procedures and must include determination that the project is consistent with the Forest Plan decisions listed above. (**Note:** The above citations are from the 1982 36 CFR 219 planning regulations)

II. Purpose and Need for Action

The purpose for this revision rests primarily in the requirements of the National Forest Management Act. The law's implementing regulations at 36 CFR 219.10(g) require that Forests Plans be revised at least every 15 years.

A genuine need to revise the plan exists due to: Changes in policy or law and changed physical, biological, and social conditions occurring on the forest.

Changes in Policy or Law

A substantial body of case law has developed since the Mississippi plan was written, which more clearly defines the roles and requirements of a Forest Plan. One resulting example is the concise listing of eight forest-plan decisions given above. Similarly, the science and policy of national forest management have continued to evolve. The service-wide adoption of Ecosystem Management in 1992, in 1994 with its ''Course to the Future'' document, the Southern Region's recovery plan for management of the Red-cockaded Woodpecker in 1995, 2002 Southern Forest Resource Assessment, the USDA Forest Service Strategic Plan (2000 Revision) direction and 2003 Healthy Forests Initiative are illustrations of such changes. These policy statements represent a fundamental change in management philosphy and, as such, are built from an extensive set of concepts and principles.

Changed Physical, Biological, and Social Conditions

Hurricanes, tornadoes, ice storms, and Southern Pine Beetle outbreaks have made changes to the forest beyond those contemplated in the current plan. Beaver impoundments and the success of exotics such as kudzu and cogongrass have made, or threaten, additional changes. In many areas, our neighbors and customers have also changed significantly. Particularly near the Gulf Coast, the private lands in and around the national forests have become more densely populated with an increasingly urban population. Urban interface is occurring in varying degrees on all national forests within the state.

III. Proposed Action

The Regional Forester for the Southern Region proposes to prepare an Environmental Impact Statement (EIS) for revising of the Forest Land and Resource Management Plan (Forest Plan) for the National Forests in Mississippi. The Forest Plan will prescribe resource management direction pursuant to the requirements of the National Forest Management Act for the six proclaimed National Forests in Mississippi; Bienville, Delta, De Soto, Homochitto, Holly Springs and Tombigbee National Forests. The agency invites the public, state and local government officials and their representatives, other federal agencies, and any affected Indian tribes to participate in the forest plan revision process which will proceed over the next 24 to 36 months before a final revised Forest Plan is issued.

The current Forest Plan for the National Forests in Mississippi requires revision to incorporate agency established ecosystem management principles. The Forest Service will identify ecological units through the Landtype Association (LTA) level, according to the Forest Service National Hierarchical Framework of Ecological Units. Management direction in the revised Forest Plan would work toward maintaining the long-term ecological structure and function of affected ecosystems.

The current Forest Plan contains limited descriptions of the desired conditions (DC's). The current plan's DC's will be updated to accurately reflect evolving agency and public expectations regarding resource uses, products, values or services occurring on or generated from national forest administered lands. One of the more critical tasks to be accomplished during the forest plan revision process will be development of updated DC's. *Desired Conditions* (DC's) are descriptive statements expressing a collective vision of landscape conditions and the uses, products, values, and services that will be provided by these conditions. The desired condition and the associated outcomes will serve as central reference points for planning and management of national forest lands. DC's will be developed in response to the significant issues identified during scoping. Extensive public participation will be sought as the forest identifies and develops these DC's. Each DC will utilize established ecological units as a criteria for defining their location and capabilities. Each DC will emphasize the resource or condition which the issue addresses. Plan revision

alternatives will be developed by allocating land areas to individual DC's. Notwithstanding the issue to which it responds, each desired condition must incorporate concepts of sustainability and multiple-use resource management principles.

IV. Preliminary Issues

The following preliminary issues were developed from the 10-year review of the current plan and subsequent annual monitoring reports, together with the public and internal response to their findings and from public comments received on project level proposals and from comments made during the earlier 1999 public forest plan scoping. Public comments in response to this notice will help us to determine additional issues and scope of the analysis to be considered.

Forest Health/Sustainability

Sustainable Forest Ecosystem Management is a key component of the Forest Service Natural Resource Agenda. Watersheds are vital to ecosystem health. Healthy watersheds promote healthy forests and sustainable forest ecosystems. The revised Forest Plan will incorporate Forest Service policy to restore and maintain healthy watersheds for use by current and future generations.

Forest Health and Sustainability topics include:

- Forest biological diversity.
- Native forest ecosystem restoration and maintenance.
- Forest Health, especially protection from insects and diseases.
- Prescribed fire's role for residual fuels reduction as well as its role for managing ecosystems will be expanded.
- Old growth.
- Protection of riparian areas.
- Streamside zone management.
- Control or eradication of noxious weeds occurring on national forest lands.
- Management of special interest areas.

Vegetation Management

The harvest and regeneration of timber-producing trees have always been a central issue in national forest planning. Over the life of the current Forest Plan, timber has generally ranked as the second most valuable agricultural corps in the State of Mississippi. This preliminary issue assumes additional significance because of its impact on other resources, such as recreation and wildlife. Not surprisingly, forest regeneration and timber harvest were the subject of more review comments than any others. Public comments received on the 10-year Review of the Land and Resource Management Plan expressed support for timber harvests to continue at current or higher levels and others objected to the level. Individuals and organizations involved in the timber industry or local government have expressed concern about the impact of national forest timber harvests on local economies, particularly on employment and the 25% returns to counties for roads and schools. The average actual timber volume sold on the National Forests in Mississippi was just over 80% of the amount planned for fiscal years 1985 through 1995. However, declines in harvest levels have occurred over the last several years causing concern for individuals and organizations involved in the timber industry and local government officials concerned about declining revenues.

Vegetation Management focuses on:

- Lands suitable for timber production.
- Relationship of timber harvest levels to local economies and jobs.
- Silvicultural systems and how they affect sustainability and forest health.
- Hardwood management within pine stands.
- Mixed pine management.
- Alternative forest products, such as pine straw raking and removal.
- Role of herbicide use in forest management.

Threatened, Endangered, Proposed and Sensitive Species Management

Red-Cockaded Woodpecker (RCW) Decisions. The Final Environmental Impact Statement for the Management of the Red-cockaded Woodpecker and its Habitat on National Forests in the Southern Region (RCW/EIS) was issued in June of 1995. The RCW/EIS contains direction to revise previous management practices, standards, and guidelines, and its Record of Decision (ROD) instructs affected forests to incorporate the new direction into their Forest Plan, through revision or amendment. The RCW/EIS ROD also includes an amendment (number 14) to the current Forest Plan for the National Forests in Mississippi which is designed to bridge the gap until the Forest Plan revision can be accomplished. Toward that end, Amendment 14 designates tentative RCW Habitat Management Areas (HMAs) and tentative population objectives. It also continues the interim standards, adopted in 1990, for areas within ¾-mile of active and inactive RCW clusters. For areas within the tentative HMAs but outside the ¾-mile circles, current Forest Plan standards and guidelines remain in effect with the exception that silvicultural methods and practices are limited. Available options include thinning, two-aged shelterwood, and uneven-aged management by either single-tree or group-selection methods. Clearcutting is allowed only to restore Longleaf or other desirable native pines to appropriate sites occupied by species less suitable for RCW.

The revised Forest Plan must establish final HMA boundaries and population objectives. The RCW/EIS Record of Decision established tentative HMAs on 367,169 acres on the Bienville, De Soto, Chickasawhay, and Homochitto Ranger Districts. The accompanying tentative population goal is 1,595 active clusters. As of 2002, the forest's total number of active clusters was 187. Additionally, the Forest Plan revision must incorporate the management practices, standards, and guidelines in the RCW Record of Decision Appendix A and in the revised RCW recovery plan. The HMAs and population objectives are subject to some modification. In addition, opportunities will be examined to expand existing HMAs or create additional HMAs. Any changes to HMAs require analysis beyond that contained in the RCW/EIS as well as a favorable opinion from the U.S. Fish and Wildlife Service obtained through formal consultation.

Other Threatened and Endangered Species

Management for other proposed, endangered, threatened, and sensitive (PETS) species will also require consideration during plan revision. Recovery plans for the affected species are developed by the U.S. Fish and Wildlife Service and their prescribed conservation and protection measures will be incorporated in forest management activities. The Forest Service will continue efforts to conserve PETS species and their habitats.

Proposed, endangered, threatened, and sensitive species management facets to be addressed during plan revision include:

- Develop management practices (actions) that promote (sustain) viable populations of proposed, endangered, threatened, and sensitive species and their habitats occurring on national forest lands.

- Determine how much of the National Forests in Mississippi's land base will be allocated to red-cockaded woodpecker management (Habitat Management Areas) and what effect such allocation will have on other resource management options.

Transportation and Access

Management of our forest transportation system attracts public interest. Almost all users of the national forests use forest roads. The revised Forest Plan will incorporate the National Roads policy.

The current extensive system of roads and trails allows access to nearly every part of the forest. In addition, and by the direction of the current Forest Plan, the National Forests in Mississippi are ''generally open to ORV's'' (off-road vehicles), now more often referred to as OHV's (off-highway vehicles). Exceptions are individually identified areas of potential resource damage or conflict with other uses. Motorized use can reduce the habitat quality for some wildlife species and cause damage to the soil resource on sensitive sites. The use of motorized vehicles can also conflict with users who are seeking more solitude or create safety concerns for non-motorized users such as hikers or horseback riders. Motorized vehicle use, particularly that of all-terrain vehicles (ATV's), has increased dramatically over the last ten years. Furthermore, the current plan's assumption that cross-country travel by OHV's would be ''limited by heavy undergrowth'' has proven inaccurate. As a result, instances of resource damage and user conflicts have become increasingly common.

Transportation and access facets to be addressed during plan revision include:

- Management area direction should address transportation management and access needs. The forest's road system will be managed to meet resource needs and provide adequate public access.
- Determine level of local roads required to provide permanent, effective access to national forest lands for all resource management needs.
- Address off-road vehicles (ORV's) management to provide the appropriate level of recreational opportunities while protecting other resources.

Recreation

National Forests in Mississippi offer a host of outdoor recreation opportunities. Recreation demand, both dispersed and developed, is expected to continue to increase over the next plan cycle. Increases in recreation use often create resource management conflicts. Different user groups compete for use of the same area, each having different expectations.

Planning will address five key areas: (1) Improving the settings for outdoor recreation and enhancing visitor experiences, (2) guaranteeing visitor satisfaction with our services and facilities, (3) reaching out to rural and urban communities to capitalize on the social and economic opportunities associated with recreation on national forests, (4) strengthening our relationships with those who cooperate with us to improve outdoor recreation for all Americans, and (5) ensuring that recreation use does not impair the land's health.

Prescribed Fire

Prescribed fire is an important management tool on the National Forests in Mississippi. The forest consistently ranks first or second in the nation in the amount of acreage to which it is applied. Historically, fire played a significant role in shaping the native plant and animal communities in Mississippi. Prior to European settlement, fires occurred throughout the year on a variety of sites, whenever conditions allowed natural or aboriginal ignitions to spread. Studies indicate that fire can have an influence on the successful regeneration of oaks. One of the concepts underlying ecosystem management is that natural processes should be simulated to the greatest extent possible. This builds on the idea that the structure and function of native ecosystems is best maintained by the conditions under whey they evolved. Prescribed fire facets to be addressed during plan revision include:

- Determine role of prescribed fire in achieving forest ecosystem management goals and objectives.
- Identify and evaluate the extent, time of year (including summer growing season), and frequencies for prescribed fire use as an ecosystem management tool.
- Evaluate impacts associated with use of plow lines and establish appropriate standards and guidelines.
- Consider use of permanent fire lines, especially within wildland/urban interface zones.

Roadless Areas

The Final Environmental Impact Statement (FEIS) for Roadless Area Review and Evaluation II (RARE II) of 1979 inventoried three roadless areas on national forest lands in Mississippi. Two areas, Black Creek and Leaf, were recommended for wilderness designation. The third, Sandy Creek, was listed for further study. The Mississippi National Forest Wilderness Act of 1984 (Pub. L. 98–515, Oct. 19, 1984, 98 Stat. 2420) established the Black Creek Wilderness and the Leaf Wilderness. Included in the act was ''release'' language which directed that inventoried areas not designed as wilderness be managed for multiple use; however, the act also directed that the ''wilderness option'' be reviewed for such areas when the Forest Plan was revised. For the National Forests in Mississippi, the Sandy Creek areas is the only one in thsi category. Additional areas have been and may be yet identified by the public for consideration during plan revision.

V. Development of Alternatives

The alternatives presented in the forest's Draft Environmental Impact Statement (DEIS) will portray a full range of responses to significant issues. The range of alternatives will include one that continues current management direction, as well as others that address the range of issues developed during the scoping process. The Draft Environmental Impact Statement will examine the effects of implementing strategies to achieve different overall desired conditions for the forest, including possible management practices and objectives that move the forest toward desired conditions. A preferred alternative will be identified in the Draft Environmental Impact Statement.

VI. Involving the Public

The obejective in this process for public involvement is to create an atmosphere of openness where all members of the public feel free to share information with the Forest Service and its employees on a regular basis. An active dialogue with the public will enable the forest to gather ideas, concerns and determine public attitudes and encourage public involvement in a planning process that fully integrates the needs and values of all segments of the public, including low-income, minority and historically underserved communities.

The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, Indian tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the Draft Environmental Impact Statement. The range of alternatives to be considered in the DEIS will be based on the identification of significant public issues, management concerns, resource management opportunities, and plan decisions specific to the National Forests in Mississippi. Public participation will be solicited by a variety of methods, including notifying in person and/or by mail, known interested and affected publics. News releases will be used to give the public general notice, and public scoping meetings will be conducted as deemed

appropriate. A Forest Planning Web site will be maintained to serve as an additional avenue for communicating with interested publics.

Public participation, facilitated by open decision making process, will be sought throughout the plan revision process and will be especially important at several points along the way. The first opportunity to comment will be during the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying additional potential issues (other than those previously described), (2) from these, identifying significant issues or those which have been covered by prior environmental review, (3) exploring additional alternatives, and (4) identifying potential environmental effects of the proposed action and alternatives (*i.e.,* direct, indirect, and cumulative effects). Public scoping comments received during the 2000 public scoping meetings will be used along with public comments received following this revised Notice of Intent.

Public meetings will be scheduled throughout the plan revision process. Their location and frequency of occurrence will vary depending on their specific objectives. Public meetings may focus on specific key issues to seek clarification and understanding prior to development of alternatives and evaluation of effects. Public notice will be provided through publication in the newspaper of record for National Forests in Mississippi (the Clarion-Ledger, published daily in Jackson, Mississippi). Notice will also be served through direct mailings to interested and affected parties identified during the plan revision process and posting on the National Forests in Mississippi Web site at: *www/southernregion.fs.fed.us/mississippi.*

VII. Release and Review of EIS

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 2005. At that time, EPA will publish a notice of availability of the draft supplement in the **Federal Register.** The comment period for the Draft Environmental Impact Statement will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553(1978). Also environmental objections that could be raised at the DEIS stage but that are not raised until completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts, *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp.1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by November, 2006. The responsible official will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 217.

Dated: September 22, 2003.

Roberta A. Moltzen,

Acting Regional Forester.

[FR Doc. 03–24373 Filed 9–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Farm Labor Housing Technical Assistance Grants.

DATES: Comments on this notice must be received by November 25, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Douglas MacDowell, Senior Loan Specialist, Multi-Family Housing Processing Division, RHS, United States Department of Agriculture, Stop 0781, 1400 Independence Ave., SW., Washington, DC 20250–0781, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Title: Farm Labor Housing Technical Assistance Grants.

OMB Number: 0575–0181.

Expiration Date of Approval: June 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Section 514 of Title V of the Housing Act of 1949, as amended, to make loans for the construction of farm labor housing. Section 516 of the Act authorizes USDA to make grants for the same purpose. These authorities are implemented through 7 CFR part 1944, subpart D.

Section 516 also authorizes USDA to provide financial assistance to private and public nonprofit agencies to encourage the development of farm labor housing. Recipients of this assistance, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. RHS refers to this assistance as Farm Labor Housing Technical Assistance. RHS publishes Requests for Proposals (RFPs) in the **Federal Register** to invite grant proposals from private and public nonprofit agencies who wish to participate in this funding. The RFP sets forth the eligibility and application requirements.

The information will be collected from applicants and grant recipients by

RHS staff in the National Office and Rural Development field offices. This information will be used to determine applicant eligibility for a grant, project feasibility, to select grant proposals for funding, and to monitor performance after grants have been awarded. If an applicant's proposal is selected for funding, they will be notified of the selection and be given the opportunity to submit a formal application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.7 hours per response.

Respondents: Private and public nonprofit agencies.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 7.

Estimated Number of Responses: 42.

Estimated Total Annual Burden on Respondents: 115 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

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 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 Tracy Givelekian, 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: September 17, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–24415 Filed 9–25–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI); Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS) is correcting a notice published July 30, 2003 (68 FR 44729–44738). This action is taken to correct the contents of the application package requiring that applicants submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. This amendment is required by an Office of Management and Budget (OMB) policy directive issued in the **Federal Register** on June 27, 2003 (68 FR 38402). The policy directive requires all grant applicants to provide a DUNS number when applying for Federal grants or cooperative agreements on or after October 1, 2003. This correction provides instructions to grant applicants on how to obtain the DUNS number.

Accordingly, the notice published on July 30, 2003 (68 FR 44729–44738), is corrected as follows:

On page 44731 in the third column under the heading ''Contents of Application Package,'' Number 1 should read: ''1. A summary page, double spaced between items, listing the following: (This information should not be presented in narrative form.)

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person and telephone number,

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Applicant's Tax Identification Number,

j. Number of recipients,

k. Source and amount of matching funds, and

l. Data Universal Numbering System (DUNS) number—Applicants should verify that they have a DUNS number or take the steps needed to obtain one. A DUNS number can be obtained at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.''

On page 44735 in the second column under the heading ''Grantee Requirements,'' add a new Number 11 to read:

''11. Provide the applicant's Data Universal Numbering System (DUNS) number obtained from Dun and Bradstreet. The DUNS number can be obtained by the applicant at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.''

Dated: September 17, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–24414 Filed 9–25–03; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product previously furnished by such agencies.

EFFECTIVE DATE: October 26, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 9, June 27, July 18, and July 25, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 24919, 38288, 42684, and 44039) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Lock-Jaw-Wood Mop Handle 7920–01–452–2028.
NPA: New York City Industries for the Blind, Inc., Brooklyn, New York.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Remanufactured Ink Jet Cartridge—(50% of the Governments Requirement).
7510–01–443–2122—HP51629A.
7510–01–443–2123—HP51626A.
NPA: Work Transition Services, San Bruno, California.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Document Destruction,
NISH, Vienna, Virginia (Prime Contractor),
Performance to be allocated to the Nonprofit Agencies identified at the following locations: IRS Service Center, Albuquerque, New Mexico.
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico,
IRS Service Center, Cheyenne, Wyoming
IRS Service Center, Colorado Springs, Colorado
IRS Service Center, Denver, Colorado
IRS Service Center, Englewood, Colorado
IRS Service Center, Lakewood, Colorado
IRS Service Center, Westminster, Colorado.
NPA: Bayaud Industries, Inc., Denver, Colorado
IRS Service Center, Las Vegas, Nevada.
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, NV,
IRS Service Center, Oakland, California;
IRS Service Center, San Jose, California.
NPA: Hope Rehabilitation Services, Santa Clara, California
IRS Service Center, Ogden, Utah.
NPA: Enable Industries Incorporated, Ogden, Utah;
IRS Service Center, Phoenix, Arizona;
IRS Service Center, Tempe, Arizona.
NPA: The Centers for Habilitation/TCH, Tempe, Arizona, IRS Service Center, Salt Lake City, Utah.
NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah, IRS Service Center, Seattle, Washington.
NPA: Northwest Center for the Retarded, Seattle, Washington.
Contract Activity: IRS-Western Area Procurement Branch-APFW, San Francisco, California.
Service Type/Location: Forms Distribution Service, Department of Health and Human Services, Agency for Healthcare Research and Quality (AHRQ), Rockville, Maryland.
NPA: Sheltered Occupational Center of Northern Virginia, Inc., Arlington, Virginia.
Contract Activity: Agency for Healthcare Research and Quality, Rockville, Maryland.
Service Type/Location: Janitorial/Custodial, Federal Aviation Administration, Belleville SFO, Scott AFB, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Custodial, IRS Service Center, Ogden, Utah.
NPA: Enable Industries Incorporated, Ogden, Utah.
Contract Activity: IRS-Western Area Procurement Branch-APFW, San Francisco, California.

Deletion

On July 18, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 42685) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Scraper and Squeegee: 7920–00–045–2556.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–24372 Filed 9–25–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[Docket Number: 030904218–3218–01]

Office of Administration; Privacy Act System of Records

AGENCY: Office of Administration, Department of Commerce.

ACTION: Notice; Commerce/Department System 2: Accounts Receivable.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records entitled Commerce/Department System 2: Accounts Receivable.

DATES: The system of records becomes effective on September 26, 2003.

ADDRESSES: For a copy of the system of records please mail requests to Brenda Dolan, U.S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW., Washington, DC 20230, 202–482–4115.

FOR FURTHER INFORMATION CONTACT: Brenda Dolan, U.S. Department of Commerce, Room 6022, 14th and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 17, 2003, Commerce published and requested comments on a proposed Privacy Act System of Records entitled Commerce/Department System 2: Accounts Receivable (68 FR 35849, June 17, 2003). No comments were received in response to the request for comments. By this notice, Commerce is adopting the proposed system as final without changes effective September 26, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 03–24321 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–BV–P

DEPARTMENT OF COMMERCE

[Docket Number: 030904219–3219–01]

Office of Administration; Privacy Act System of Records

AGENCY: Office of Administration, Department of Commerce.

ACTION: Notice; Commerce/Department System 18: Employees Personnel Files not covered by notices of other agencies.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records entitled Commerce/Department System 18: Employees Personnel Files Not Covered by Notices of Other Agencies.

DATES: The system of records becomes effective on September 26, 2003.

ADDRESSES: For a copy of the system of records please mail requests to Brenda Dolan, U.S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW., Washington, DC 20230, 202–482–4115.

FOR FURTHER INFORMATION CONTACT: Brenda Dolan, U.S. Department of Commerce, Room 6022, 14th and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 17, 2003, Commerce published and requested comments on a proposed Privacy Act System of Records entitled Commerce/Department System 18: Employees Personnel Files Not Covered by Notices of Other Agencies (68 FR 35852, June 17, 2003). No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed system as final without changes effective September 26, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 03–24322 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–2003]

Maxtor Corp.—Application for Subzone Status; Extension of Comment Period

The comment period for the application for subzone status at the Maxtor Corporation in Coppell, Texas, submitted by the Dallas/Fort Worth International Airport Board (68 FR 42685, 7/18/03), is being extended, to October 16, 2003, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until October 31, 2003. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

Dated: September 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–24397 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.

SUMMARY: In response to a request from Xiangcheng Yisheng Foodstuffs Co., Ltd. (''Yisheng''), the Department of Commerce is conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2001, through October 31, 2002. We have preliminarily determined that, based on the use of adverse facts available, the respondent sold subject merchandise to the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–0090.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Bureau of Customs and Border Protection (''Customs'') to that effect.

Background

On December 31, 2002, the Department of Commerce (''the Department'') initiated a new shipper antidumping duty review of shipments of fresh garlic from the People's Republic of China (PRC) exported by Zhengzhou Harmoni Spice Co., Ltd., Jining Trans-High Trading Co., Ltd., and Yisheng. See *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 68 FR 542 (January 6, 2003). The Department is still reviewing Zhengzhou Harmoni Spice Co., Ltd., and Jining Trans-High Trading Co., Ltd. The current deadline for preliminary results of review for these two firms is October 31, 2003. The Department is conducting this review of Yisheng in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act'').

Separate Rate

In proceedings involving non-market-economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. In this review, Yisheng has requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See,*e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Yisheng provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this producer/ exporter is independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Yisheng has placed on the record a number of documents to demonstrate absence of *de jure* control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations.'' The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, *e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information on the record of this review that would cause us to reconsider this determination.

2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 59 FR at 22586–22587. Therefore,the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

According to Yisheng, it is a privately owned company. It has asserted the following: (1) There is no government participation in setting export prices; (2) its sales manager and authorized employees have the authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; (4) there are no restrictions on the use of its export revenue; and (5) it is responsible for financing its own losses. Yisheng's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses reveals no other information indicating the existence of government control. Consequently, we preliminarily determine that Yisheng has met the criteria for the application of a separate rate.

Use of Adverse Facts Available

The Department issued an antidumping duty questionnaire to Yisheng on December 31, 2002. The Department granted a number of extensions to Yisheng to file its response to the questionnaire and, in total, extended the deadline from February 7, 2003, to April 1, 2003. The Department received Yisheng's response to the Department's original questionnaire on April 1, 2003. The Department rejected Yisheng's factors-of-production response entirely because the Department found it to be inadequate and internally inconsistent. On June 2, 2003, the Department sent Yisheng a supplemental questionnaire requesting a new factors-of-production submission and clarification on other parts of its response. On June 20, 2003, the Department received Yisheng's response to the supplemental questionnaire but its submission did not include a factors-of-production response. Yisheng stated that it omitted factors-of-production information because it did not own a photocopying machine, its sole printer was a 20-year old dot-matrix printer, no one at the company spoke English, and the data had to be obtained from third parties.

On August 13, 2003, in response to a telephone call from Yisheng's counsel stating that Yisheng would file its factors-of-production response soon, the Department informed Yisheng's counsel that it would reject such a response because it would be untimely filed. On August 18, 2003, 59 days past the June 20, 2003, deadline, Yisheng submitted a factors-of-production response. The Department rejected this submission for the following reasons: (1) it was untimely filed, (2) Yisheng did not demonstrate that that it acted to the best of its ability in providing the requested information, and (3) the information could not be used without undue difficulties. See Letter from Laurie Parkhill to Yisheng, dated September 3,

2003. On August 19, 2003, Yisheng filed a submission requesting that the Department accept its August 18, 2003, submission and claimed for the first time that its supplier was not cooperating. Specifically, Yisheng claimed that, ''Only after the Department's deadline for this supplemental response, did the grower, Yuyu, agree to allow Yisheng's outside accountants to visit it and collect data to answer the questions relevant to it.'' Yisheng did not provide an explanation, however, as to why its supplier would not cooperate and did not provide an explanation as to why it had not identified this reason earlier.

In a review involving a non-market economy (''NME''), the factors of production are crucial to determining normal value. As the Department has stated clearly in its recent Policy Bulletin covering new shipper reviews in general (found on the Department's website at *http://ia.ita.doc.gov*), it is the responsibility of the party requesting a new shipper review to provide all of the information necessary to the Department for initiating the new shipper review. It is also the responsibility of the party requesting a new shipper review to provide the Department with the necessary information for it to calculate an accurate dumping margin. In other words, if a party desires to receive the benefits of a new shipper review, it has an affirmative obligation to provide the Department with the information necessary to calculate the new shipper dumping margin. Thus, in NME new shipper review cases, the respondent must provide complete factors-of-production information.

Section 776(a)(2) of the Act provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

We find that, pursuant to section 776(a)(2)(A) of the Act, Yisheng withheld information we requested by not submitting an adequate factors-of-production response. We also find that, pursuant to section 776(a)(2)(B) of the Act, Yisheng did not provide an adequate factors-of-production response in a timely manner. Finally, we find that, pursuant to section 776(a)(2)(C) of the Act, Yisheng significantly impeded this proceeding by not providing an adequate factors-of-production response for the following reasons: (1) the factors-of-production information is necessary to calculate a margin, (2) as a self-requesting new shipper, Yisheng has an affirmative obligation to respond, (3) Yisheng's first factors-of-production response was grossly inadequate, and (4) Yisheng did not submit a subsequent response to the request for factors-of-production information until 59 days after the deadline. Therefore, pursuant to section 776(a)(2) of the Act, we preliminarily determine that the use of facts otherwise available is warranted to calculate a margin for Yisheng's sales of subject merchandise during the period of review.

Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

The Department rejected Yisheng's August 18, 2003, factors-of-production response for the following reasons: (1) the information was not submitted by the deadline established for its submission, (2) Yisheng did not demonstrate that it acted to the best of its ability to provide the information, and (3) given the limited amount of time left under the statutory deadlines of the review to analyze its factors-of-production submission, issue supplemental questions, plan and conduct a verification, and prepare the preliminary results, the information could not be used without undue burden on the Department. Thus, for the various reasons under sections 782(e)(1), (4), and (5) of the Act, the Department has not used the factors-of-production information Yisheng reported.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the *Statement of Administrative Action* accompanying the *Uruguay Round Agreements Act*, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference ''. . . to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See SAA at 870.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid factors-of-production information. Yisheng had ample time to submit the requested production-process information and factors-of-production data for this new shipper review. In fact, Yisheng had more days to respond to the original and supplemental questionnaires than any other company in this new shipper review. Because Yisheng had an affirmative responsibility to provide the necessary factors-of-production information so that we may calculate a margin and because it did not provide this necessary information, we find that Yisheng did not act to the best of its ability.

Applying total adverse facts available to Yisheng is consistent with the Department's application of adverse facts available in past cases. See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767 (June 19, 2003) (''*Fresh Garlic: Final*''). In *Fresh Garlic: Final*, we applied adverse facts available to the respondent, Hongda, when it failed to provide total production and factors of production for the period in a timely manner. See also *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying *Issues and Decision Memorandum*, Comment 7 (''*Crawfish*'').

In *Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review* (''*Fresh Garlic: Preliminary*''), we found that the ''responsibility for submission of accurate factors of production lies with the respondent seeking a rate based on such information, and that failures, even if made by a supplier, may provide grounds for the application of adverse facts available.'' *Fresh Garlic: Preliminary*, 68 FR 22676 (April 29, 2003) (citing *Crawfish* at Comment 7). Also, in the *Fresh Garlic: Preliminary*, the Department explained that the language of the statute and regulation

allow for the application of an adverse inference when an ''interested party'' does not act to the best of its ability in responding to questionnaires. The Department explained that a supplier that refused to respond to requests for necessary information is an ''interested party'' to the review and therefore application of adverse facts available was warranted. *Id.* (citing *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying *Issues and Decision Memorandum*, at Comment 10).

Furthermore, because Yisheng did not provide an acceptable explanation as to why its supplier would not cooperate, applying adverse facts available to Yisheng is consistent with our conclusion in *Creatine Monohydrate From the PRC*, where the Department stated, ''. . . [a]s there is no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse inference in applying facts available is warranted due to the *supplier's* failure to act to the best of its ability.'' *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71108 (December 20, 1999) (emphasis in original) (''*Creatine Monohydrate From the PRC*''). See also *Fresh Garlic: Preliminary* 68 FR at 22679; *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying *Issues and Decision Memorandum*, Comment 10.

In Yisheng's August 19, 2003, submission, it claimed for the first time that its supplier was not cooperating and that this non-cooperation was the reason it was unable to submit a timely factors-of-production response. Given that Yisheng's claim was made after it was informed that its response would be rejected and 60 days after the deadline for its factors-of-production response, the Department questions the validity of this claim. Moreover, Yisheng's August 19, 2003, submission did not provide an explanation as to why its supplier would not cooperate and did not provide an explanation as to why it did not identify this reason earlier. Therefore, we find that Yisheng did not act to the best of its ability to comply with our request for information and, pursuant to section 776(b) of the Act, we have preliminarily determined to use adverse facts otherwise available in reaching the preliminary results of review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. If there are no independent sources from which the Department can derive calculated dumping margins, however, unlike other types of information such as input costs or selling expenses, the only source for margins is previous administrative determinations, as is the case in this review.

Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' See *TRBs*, 61 FR at 57392. See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate we have selected is the rate currently applicable to Yisheng and all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Yisheng, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Preliminary Results of the Review

As a result of the application of adverse facts available, we preliminarily determine a dumping margin of 376.67 percent for Yisheng's exports of fresh garlic during the period November 1, 2001, through October 31, 2002.

An interested party may request a hearing within 30 days of publication of

these preliminary results. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date under 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who make such a submission in this review are requested to submit (1) a statement of each issue, (2) a brief summary of the argument for each issue, and (3) a table of authorities.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal brief, within 90 days of publication of this notice. See 19 CFR 351.214(i)(1).

Assessment Rates

Upon completion of this new shipper review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each of the entries produced by Henan Yuyu Fruits & Vegetables Products Co., Ltd. and exported by Yisheng during the period of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise grown by Henan Yuyu Fruit & Vegetables Products Co., Ltd., and exported by Yisheng, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Yisheng, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 22, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–24398 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Court Decision and Amended Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decision and Amended Final Determination of Sales at Less Than Fair Value.

SUMMARY: On March 8, 2000, the Court of International Trade affirmed the Department of Commerce's second remand determination results affecting the final margins for MAN Roland Druckmaschinen AG and its wholly-owned subsidiary MAN Plamag Druckmaschinen AG, as well as for ''All Other'' producers/exporters, except Koenig Bauer-Albert AG, in the less-than-fair-value investigation of large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany. As there is now a final and conclusive court decision in this action, we are amending our final determination and will instruct the United States Bureau of Customs and Border Protection (BCBP) to liquidate all appropriate entries at the amended rate, as appropriate.

EFFECTIVE DATE: September 26, 2003.

FOR FURTHER INFORMATION CONTACT: David Goldberger at (202) 482–4136 or Irene Darzenta Tzafolias at (202) 482–0922, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1996, the Department of Commerce (the Department) published notice of its final determination of less-than-fair-value (LTFV) investigation of large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Germany. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 38166 (July 23, 1996). In the final determination of the LTFV investigation, the Department established a final dumping margin of 30.80 percent *ad valorem* for MAN Roland Druckmaschinen AG (MAN Roland) and All Others (except Koenig Bauer-Albert AG (KBA) for which a 46.40 percent margin was established based on adverse facts available). On September 4, 1996, the Department published an antidumping duty order correcting ministerial errors made in the final determination and instructing the Customs Service[1] to collect cash deposits at the rate of 30.72 percent *ad valorem* for MAN Roland and All Others (except KBA as indicated above), on entries of the subject merchandise entered or withdrawn from warehouse on or after the date of publication of the International Trade Commission's (ITC's) final determination of threat of material injury.[2] *See Notice of*

[1] Now known as BCBP.

[2] The ITC's final determination of threat of material injury was published on September 5, 1996. The ITC found that an industry in the United States was threatened with material injury, and further determined, pursuant to section 735(b)(4)(B) of the Tariff Act of 1930, as amended, that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation. *See* ITC Final, 61 FR 46824 (September 5, 1996) at footnote 4. Therefore, pursuant to section 736(b)(2) of the Act, the Department directed the Customs Service to terminate the suspension of liquidation of entries of

Continued

Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany, 61 FR 46623 (September 4, 1996).

Following publication of the Department's antidumping duty order, the respondent MAN Roland and the petitioner Goss Graphic System, Inc., filed a lawsuit with the Court of International Trade (CIT) challenging various aspects of the Department's final determination of the LTFV investigation. In its first decision in this case on June 23, 1998, *Koenig & Bauer-Albert AG, et al., v. United States*, 15 F. Supp. 2d 834, 849–850, 854–855 (CIT 1998), Slip Op. 98–83 at 28–30, 40–43, the CIT issued an order remanding two issues to the Department. In its remand instructions, the Court ordered the Department to reconsider its decision not to combine certain production costs for MAN Roland and its affiliate MAN Plamag Druckmaschinen AG (MAN Plamag), and granted the Department's request to recalculate MAN Roland's selling, general and administrative (SG&A) expenses using an appropriate cost allocation ratio. In its final remand determination on September 17, 1998, the Department declined to compute a single, weighted-average cost for MAN Roland and Man Plamag because the companies failed to satisfy the fundamental condition for averaging costs -- that the products manufactured at their facilities be sufficiently similar in physical characteristics, such that they could be considered identical for product comparison purposes. However, the Department recalculated MAN Roland's SG&A expenses using an appropriate allocation ratio. *See* September 17, 1998, *Final Results of Redetermination Pursuant to Court Remand* (*Redetermination 1*) at 9–10, 13–14. As a result of our recalculations pursuant to Court remand, the antidumping margin for MAN Roland changed from 30.72 to 39.60 percent.

In a later decision on March 16, 1999, *Koenig & Bauer-Albert AG, et al., v. United States*, 44 F. Supp. 2d 280, 287–288 (CIT 1999), Slip Op. 99–25 at 16–18, the CIT affirmed the Department's recalculation of MAN Roland's SG&A expenses, but did not affirm the Department's final remand results pertaining to the issue of combining certain production costs of MAN Roland and its affiliate. The CIT held that the Department did not address the threshold question of whether MAN Roland and MAN Plamag should be collapsed in order to properly determine whether their production costs should be averaged, and remanded the issue to the Department again for reconsideration and explanation consistent with its opinion. Upon remand, on August 10, 1999, the Department found that MAN Roland and MAN Plamag should have been collapsed as a single entity in performing its antidumping analysis in accordance with the Department's practice as it then existed and was later codified at 19 CFR 351.401(f). Moreover, the Department determined that treating these affiliated producers as a single entity necessitated that the inputs transferred between them be valued at the cost of producing the input, and adjusted its constructed value calculations accordingly. Furthermore, in light of the identical merchandise requirement for production cost averaging purposes, the Department maintained its previous remand determination not to weight-average the production costs of the two affiliated companies. In addition, because MAN Plamag made no sales of subject merchandise to the United States during the period of investigation, the Department's decision to collapse MAN Roland and MAN Plamag did not require any changes to the sales side of the Department's original final margin analysis. However, in contrast to its original final determination, the Department applied the same margin, as amended based on the above-described cost adjustments, to both MAN Roland and MAN Plamag. *See* August 10, 1999, *Final Results of Redetermination Pursuant to Court Remand* (*Redetermination 2*) at 5–8. As a result of the adjustments made in *Redetermination 2*, the revised antidumping margin for both MAN Roland and MAN Plamag changed from 39.60 percent (margin calculated based on *Redetermination 1*) to 39.53 percent.

In sum, as a result of the two remands in this case, the final dumping rate for MAN Roland and its affiliate MAN Plamag increased from 30.72 percent (the original final LTFV margin for MAN Roland) to 39.53 percent *ad valorem*. The rate for All Others (which was originally based on Man Roland's rate) changed accordingly.

On March 8, 2000, the CIT affirmed the Department's final remand results (*see Koenig & Bauer-Albert AG, et al., v. United States*, Slip Op. 00–25, 90 F. Supp. 2d 1284 (CIT 2000). On April 7, 2000, we published a notice of court decision (*see Notice of Court Decision and Suspension of Liquidation: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 65 FR 18294).

On April 22, 2002, the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany was revoked effective September 1, 1999 (*Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Notice of Final Results of Changed Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews,* 67 FR 19551). On May 15, 2002, the CIT dismissed the litigation (*Koenig & Bauer-Albert AG v. U.S.,* Consol. No. 96–10–02298).

Therefore, in accordance with *Redetermination 2*, and because all litigation has concluded and the injunction has been lifted, we are amending our final LTFV determination in this matter and we will instruct the BCBP to liquidate entries, as appropriate, in accordance with our remand results.

Amendment to Final Determination

Pursuant to section 516A(e) of the Act, we are amending the final determination of LTFV investigation of LNPP from Germany. As a result of the remand determinations, we have assigned MAN Roland/MAN Plamag, and All Others final weighted-average margins as follows:

Manufacturer/Exporter	Weighted-average margin percentage
MAN Roland/MAN Plamag	39.53
All Others	39.53

LNPP imported from Germany, entered or withdrawn from warehouse, for consumption before this date, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

Accordingly, the Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. We will instruct the BCBP to assess entry-specific antidumping duty amounts by applying an *ad valorem* rate of 39.53 percent to the value of each entry during the period September 5, 1996 through August 31, 1997. The Department will issue appraisement instructions to the BCBP after publication of the amended final determination.

This notice is published in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 16, 2003.

James J. Jochum,

Assistant Secretaryfor Import Administration.

[FR Doc. 03–24395 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–882]

Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 26, 2003.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Jim Mathews or Tinna E. Beldin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4136, (202) 482–2778 or (202) 482–1655, respectively.

FINAL DETERMINATION:

We determine that refined brown aluminum oxide (RBAO) from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). In addition, we determine that critical circumstances exist with respect to all PRC producers/exporters of the subject merchandise. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Background

The preliminary determination in this investigation was published on May 6, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China,* 68 FR 23966 (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

In July 2003, we conducted verification of the questionnaire responses of the sole participating respondent in this case, Zibo Jinyu Abrasive Co., Ltd. (Jinyu).

We gave interested parties an opportunity to comment on the preliminary determination. In August 2003, we received case and rebuttal briefs from the following parties: the petitioners, C-E Minerals, Treibacher Schleifmittel Corporation, and Washington Mills Company, Inc.; the respondent Jinyu; and interested third parties Allied Mineral Products, Inc., Cometals, a Division of Commercial Metals Co., Saint Gobain Corporation, Dauber Company, Inc., Golden Dynamic Inc., China Abrasives Import and Export Corporation, and White Dove Group Import and Export Inc. (hereinafter interested third parties). The Department held a public hearing on August 20, 2003, at the request of the petitioners and the interested third parties.

Due to the closure of the federal government on September 18–19, the deadline for this final determination is September 22, 2003.

Scope of the Investigation

The merchandise covered by this investigation is ground, pulverized or refined brown artificial corundum, also known as refined brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the period of investigation is April 1, 2002, through September 30, 2002, which corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, October 2002).

Nonmarket Economy Status for the PRC

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345, 49346 (September 27, 2001). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see *Preliminary Determination* at 23968.

Separate Rate

In our preliminary determination, we found that Jinyu had met the criteria for receiving a separate antidumping rate. We have not received any information since the preliminary determination which would warrant reconsideration of our separate-rate determination with respect to this company. Therefore, we continue to find that Jinyu should be assigned an individual dumping margin.

Surrogate Country

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see *Preliminary Determination* at 23970.

PRC-Wide Rate and Use of Facts Otherwise Available

As discussed in the Department's *Preliminary Determination*, Jinyu was the only exporter to respond to the Department's questionnaire and to cooperate in this investigation. Therefore, we have continued to calculate a company-specific rate for Jinyu only. However, in the preliminary determination, we stated that our review of U.S. import statistics from the PRC revealed that Jinyu did not account for all imports into the United States from the PRC. For this reason, we determined that some PRC exporters of subject merchandise failed to cooperate in this

investigation and assigned to them a rate based on adverse facts available pursuant to section 776(b) of the Act. *See Preliminary Determination* at 23969. These facts have not changed since the preliminary determination. Therefore, in accordance with our standard practice, as adverse facts available, we are continuing to assign as the PRC-wide rate the higher of: (1) the highest margin listed in the notice of initiation; or (2) the margin calculated for Jinyu. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum at Comment 1. For purposes of the final determination of this investigation, we are using the margin calculated for Jinyu as adverse facts available because it is higher than the margin of 131.38 percent stated in the notice of initiation.

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. A complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. These changes include:

• We used the value reported in the Defense Logistics Agency FY2000 Annual Report as the surrogate value for crude brown aluminum oxide.
• Based on our verification findings, we have included an additional sale of the subject merchandise in our final determination analysis, which Jinyu had inadvertently omitted in its original reporting.
• We revised Jinyu's reported consumption of electricity by allocating electricity consumption only to the brown and white aluminum oxide production, based on our verification findings.
• We recalculated Jinyu's labor factor by allocating labor based on actual production, rather than theoretical production, based on our verification findings.
• We did not add a separate packing labor factor to our calculation of normal value to avoid double-counting because we found at verification that the reported packing labor is part of the production line labor, which is already included in the direct labor factor.

For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum and the Decision Memorandum comments.

Critical Circumstances

In our preliminary determination, we found, pursuant to section 733(e)(1) of the Act, that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise from the respondent and all other producers/exporters. As discussed in detail in the preliminary determination, we first found that there is a history of dumping and material injury by reason of dumped imports. We then analyzed the import volume and value data placed on the record, in accordance with 19 CFR 351.206, and preliminarily determined that imports of the subject merchandise have been massive over the short period of time subsequent to the filing of the petition. *See Preliminary Determination* at 23971. In accordance with section 735(a)(3) of the Act, and based upon our verification of Jinyu's shipment data placed on the record, we determine that critical circumstances exist with respect to RBAO from Jinyu. We applied adverse facts available for all other producers / exporters as an adverse inference that critical circumstances apply for companies that refused to cooperate with the Department's requests for information. *See* September 18, 2003, Memorandum to File entitled *Jinyu Shipment Data Analysis for the Final Determination* and Decision Memorandum at Comments 1 and 2. Therefore, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of any unliquidated entries of subject merchandise on or after the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, as discussed below in the ''Continuation of Suspension of Liquidation'' section.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by Jinyu.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the BCBP to continue to suspend liquidation of all entries of RBAO from the PRC that are entered, or withdrawn from warehouse, for consumption on or after February 5, 2003, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with our critical circumstances finding.

Effective on or after the date of publication of the Department's final determination, BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price or constructed export price, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin Percentage	Critical Circumstances
Zibo Jinyu Abrasive Co., Ltd.	135.18	Yes
PRC-wide Rate	135.18	Yes

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Jinyu.

Disclosure

We will disclose the calculations performed within five days of the date of the announcement of the final determination to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the BCBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: September 22, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memorandum

Comments

1. Use of Adverse Facts Available for Critical Circumstances
2. Seasonal Trend for Jinyu's Shipments
3. Surrogate Value for Crude Brown Aluminum Oxide
4. Application of Verification Findings

[FR Doc. 03–24396 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Requests for Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2004 tariff rate quotas established by the Trade and Development Act of 2000 (TDA 2000).

SUMMARY: The Department hereby solicits requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2004 tariff rate quotas established by the TDA 2000, and amended by the Trade Act of 2002. To be considered, a request must be received or postmarked by 5:00 p.m. on October 14, 2003 and must comply with the requirement of 15 C.F.R 340. If a request is received, the Department will solicit comments on the request in the Federal Register and provide a twenty-day comment period. Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified.

ADDRESS: Requests must be submitted to: Industry Assessment Division, Office of Textiles and Apparel, Room 3100, United States Department of Commerce, Washington, D.C. 20230. Six copies of any such requests must be provided.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the TDA 2000 created two tariff rate quotas (TRQs), providing for temporary reductions for three years in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the TDA 2000. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2003 through 2005 TRQ levels to 3,500,000 square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. Both of these limitations may be modified by the President, not to exceed 1,000,000 square meters per year for each tariff rate quota.

The TDA 2000 requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel must be considered. On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations. 15 CFR 340.

To be considered, requests must be submitted by a manufacturer of men's or boys' worsted wool suits, suit-type jackets, and trousers in the United States and must comply with the requirements of 15 CFR 340.

A request must include: (1) The name, address, telephone number, fax number, and Internal Revenue Service number of the requester; (2) The relevant worsted wool apparel product(s) manufactured by the person(s), that is, worsted wool suits, worsted wool suit-type jackets, or worsted wool trousers; (3) The modification requested, including the amount of the modification and the limitation that is the subject of the request (HTS heading 9902.51.11 and/or 9902.51.12); and (4) A statement of the basis for the request, including all relevant facts and circumstances.

A request should include the following information for each limitation that is the subject of the request, to the extent available: (1) A list of suppliers from which the requester purchased domestically produced worsted wool fabric during the period July 1, 2002 to June 30, 2003, the dates of such purchases, the quantity purchased, the quantity of imported worsted wool fabric purchased, the countries of origin of the imported worsted wool fabric purchased, the average price paid per square meter of the domestically produced worsted wool fabric purchased, and the average price paid per square meter of the imported worsted wool fabric purchased; (2) A list of domestic worsted wool fabric producers that declined, on request, to sell worsted wool fabric to the requester during the period July 1, 2002 to June 30, 2003, indicating the product requested, the

date of the order, the price quoted, and the reason for the refusal; (3) The requester's domestic production and sales for the period January 1, 2003 to June 30, 2003 and the comparable six month period in the previous year, for each of the following products: worsted wool suits, worsted wool suit-type jackets, and worsted wool trousers; (4) Evidence that the requester lost production or sales due to an inadequate supply of domestically-produced worsted wool fabric on a cost competitive basis; and (5) Other evidence of the inability of domestic producers of worsted wool fabric to supply domestically produced worsted wool fabric to the requester.

Requests must be accompanied by a statement by the person submitting the request or comments (if a natural person), or an employee, officer or agent of the legal entity submitting the request, with personal knowledge of the matters set forth therein, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

Any business confidential information provided that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. To the extent business confidential information is provided, a non-confidential submission should also be provided, in which business confidential information is summarized or, if necessary, deleted.

If a request is received, the Department will cause to be published a notice in the Federal Register summarizing the request or requests and soliciting comments from any interested person, including U.S. manufacturers of worsted wool fabric, wool yarn, wool top and wool fiber, regarding the requested modification. A twenty-day comment period will be provided. Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified.

Dated: September 23, 2003.

D. Michael Hutchinson,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries

[FR Doc.03–24388 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092203B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Law Enforcement Advisory Panel (LEAP).

DATES: This meeting will be held on Tuesday, October 14, 2003 from 1 to 5 p.m.

ADDRESSES: This meeting will be held at the Omni Hotel - Marina Tower, 900 North Shoreline Boulevard, Corpus Christi, TX 78401; telephone: 361–887–1600.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The LEAP will convene to review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) that includes alternatives to set definitions of maximum sustainable yield, optimum yield (OY), overfishing, and the overfished condition of shrimp stocks as well as improve effort estimates and the bycatch reporting methodology. The LEAP will also review an Options Paper for Amendment 14 that includes options to cap or reduce effort to achieve OY with ancillary benefits of further reducing bycatch from shrimp trawling. The LEAP will also review an amendment to reduce fishing mortality on red grouper, Amendment 22 to the Reef Fish FMP to establish a rebuilding plan for red snapper, and an Options Paper to reduce fishing mortality on vermilion snapper. Finally, the LEAP will review a scoping document that includes potential changes to a wide range of regulations in the Coastal Migratory Pelagics FMP in both the Gulf and Atlantic. The LEAP will discuss possession of both bag limit and commercially caught fish simultaneously and a matter regarding when a violation is determined to have occurred.

The LEAP consists of principal law enforcement officers in each of the Gulf states as well as the NMFS, the U.S. Coast Guard, and the NOAA's General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–228–2815.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the LEAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 7, 2003.

Dated: September 22, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, Office of Sustainable Fisheries.

[FR Doc. 03–24393 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092203C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) GMT will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Tuesday, October 14, 2003 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Wednesday, October 15 through Friday, October 17, 2003.

ADDRESSES: The meetings will be held at the NMFS, Northwest Region Office, Building 1, Northwest Region

Conference Room, 7600 Sand Point Way NE, Seattle, WA 98115–0070, 206–526–6150.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer, 503–820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to prepare reports, recommendations, and analyses in support of various Council decisions through the remainder of the year. The following specific items comprise the draft agenda: (1) discuss Amendment 16–3 rebuilding plan alternatives for overfished groundfish stocks, (2) resolve any outstanding catch estimation data issues and evaluate the need for inseason management adjustments, 3) discuss observer data flow for fishery years 2004–2006, (4) review new stock assessments for cabezon and lingcod, (5) review a new lingcod rebuilding analysis, (6) develop a range of groundfish harvest levels for 2005–2006, (7) develop a preliminary range of 2005–2006 groundfish management measures, (8) review and recommend Programmatic Bycatch Environmental Impact Statement alternatives, (9) work on Volume 2 of the 2002 Stock Assessment and Fishery Evaluation document (10) consider and recommend control dates for potential groundfish individual quota (IQ) programs, (11) discuss open access limitation, (12) review 2004 exempted fishing permit applications, and (13) other miscellaneous Council groundfish issues.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 22, 2003.

Richard W. Surdi,

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

[FR Doc. 03–24392 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092203A]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

DATES: The CPSMT will meet on Tuesday, October 14, 2003, from 8 a.m. to 12 p.m. The CPSAS will meet on Tuesday, October 14, 2003, from 1 p.m. until business for the day is completed.

ADDRESSES: Both meetings will be held in the large conference room (D–203) at the National Marine Fisheries Service, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037, 858–46–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the CPSMT meeting is to review the current Pacific sardine biomass estimate and 2004 harvest guideline. The purpose of the CPSAS meeting is to review documents prepared by the CPSMT, notably the Pacific sardine biomass estimate and recommended harvest guideline for the 2004 fishery.

Although non-emergency issues not contained in the CPSMT and CPSAS meeting agendas may come before the committees for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's or CPSAS's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: September 22, 2003.

Richard W. Surdi,

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

[FR Doc. 03–24394 Filed 9–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Privacy Act of 1974; System of Records

AGENCY: The Joint Staff, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Joint Staff proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on October 27, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Directives and Records Division, Directives and Records Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Joint Staff notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on September 11, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

JS008CSD

SYSTEM NAME:

Joint Protection Enterprise Network.

SYSTEM LOCATION:

Booz-Allen Hamilton, Inc, 5201 Leesburg Pike, Suite 400, Falls Church, VA 22041–3203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, civilian or military, involved in, witnessing or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel on a DoD installation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative information supporting known or suspected suspicious activity and incidents at DoD installations. Information includes subject's name, aliases, Social Security Number, address(es), telephone number, date of birth, driver's license number, passport number, license plate number, vehicle description, description of occupants, source of investigation, risk analysis, threat assessment, victim names, names of informants, names of law enforcement officers and investigators, and subject's group affiliations, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 5013, Secretary of the Navy; Section 21, Internal Security Act of 1950 (Pub. L. 81–831); 40 U.S.C. 318, Special Police; and E.O. 9397 (SSN).

PURPOSE(S):

To create an integrated, cross-domain, information sharing program on force protection and threat related events that potentially impact the security of DoD installations within the United States. The program will permit timely sharing of essential information among military, law enforcement, and intelligence organizations that, as part of their mission, collect and disseminate such information as a means of identifying and combating possible threats. The program can document, refer, track, monitor, and evaluate suspected criminal activity affecting the interests, property, and/or personnel on a DoD installation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local law enforcement, security, and intelligence agencies for the purpose of providing force protection and threat information impacting on the security of DoD installations within the United States when disclosure is authorized by statutory and/or regulatory authority and the information is required in order for the receiving agency to discharge its assigned responsibilities.

The DoD ''Blanket Routine Uses'' published at the beginning of the Joint Staff's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system

STORAGE:

Electronic media and computer output products (*e.g.* paper)

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, driver's license number or passport number.

SAFEGUARDS:

Access to the computer by authorized personnel is controlled by a login and password control system. In addition, all terminals capable of accessing the system are located in secure areas. Records are accessible only to authorized persons with a valid need-to-know, who are appropriately screened, investigated and determined eligible for access. Additionally, users are subject to limitations with the system, based on their specific functions and security eligibility and access level.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves the retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

JPEN System Manager, Joint Staff, C4 Systems Directorate, 6000 Joint Staff Pentagon, Washington, DC 20318–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to The Joint Staff, C4 Systems Directorate, 6000 Joint Staff Pentagon, Washington, DC 20318–6000.

Requests for information must be signed and include the individual's full name, address, telephone number, Social Security Number or driver's license number, and passport number.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to The Joint Staff, C4 Systems Directorate, 6000 Joint Staff Pentagon, Washington, DC 20318–6000.

Requests for information must be signed and include the individual's full name, address, telephone number, Social Security Number or driver's license number, and passport number.

CONTESTING RECORD PROCEDURE:

The Joint Staff's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; Joint Administrative Instruction 2530.09; 32 CFR part 313; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, and other personnel, informants, various DoD, federal, state, and local investigative agencies, and any other individual or organization, which may supply pertinent information.

EXEMPTIONS CLAIMED FOR SYSTEM:

None.

[FR Doc. 03–24358 Filed 9–25–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Exclusive or Partially Exclusive Licenses

AGENCY: Department of the Army, U.S. Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following pending patents listed under **SUPPLEMENTARY INFORMATION.** Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, VA 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until December 26, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672.

SUPPLEMENTARY INFORMATION:

1. *Title:* Scour Sensor Assembly. An optical scour sensor monitors scour, including deposition and ablation, in bodies of water that may be too lossy to enable use of electrical signals. A specially configured optical fiber is inserted into the sediment and the interface between the sediment and water thereby monitored using a top-mounted control box to pulse light down the cable and capture reflected signals. The optical fiber may be armored by a soft plastic concentric shield and incorporate a micro-bend inducer for detecting minute indentations in the fiber. The presence of a non-liquid, *e.g.*, sediment, against the cable is detected because the sediment impinges on the fiber causing an indentation therein. At each indentation a reflection is sent back to the source. Using principles of optical time domain reflectometry (OTDR), the location of the indentation is determined. The data are fed to a remote system for processing, analysis and display.

Serial No.: 09/878,997.

Date: 6/13/2001.

2. *Title:* Pattern Detection Using the Bragg Effect at RF Frequencies. A system, and method of its use, provides for detecting patterns that exist within a geographic area due to the presence of an orderly array of objects. In a preferred embodiment, the system uses an irregular array of transceivers to illuminate an area suspected of containing a minefield. Typically, these minefields are arranged in an orderly arrangement. Exploiting the Bragg Effect, the transceivers, each configured as a surface wave radar, illuminate an area with RF energy that is scanned in carrier frequency within the HF band (3–30 MHz) at a pre-specified interval. At the frequency that corresponds to the Bragg Effect, a significantly increased signal level occurs that indicates the presence of a pattern such as one might expect from reflections from numerous objects arranged orderly. By processing these returns judiciously, the minefield's size, location, perimeter, and even the location of individual mines may be determined.

Serial No.: 60/245,2000.

Date: 11/3/2000.

3. *Title:* Detector and System for Indicating Pressure Change and Methods of Use. An electronic detector configuration enables the accurate determination of pressure differences in scenarios in which conventional detectors and detector systems introduce inherent thermal inequalities at the interface with their immediate environs. A preferred embodiment of the present invention accurately measures snow water equivalent (SWE) while eliminating the need for fluid-filled pillows that contain environmentally hazardous fluids. By matching the thermal conductivity of surrounding soil to a detector configuration having an inherently low specific heat, it minimizes effects of differences in thermal conductivity at the snow/soil interface that cause SWE pressure sensor measurement errors. Further, it minimizes thermal effects by keeping soil moisture under the configuration approximately the same as that of surrounding soil. The system is environmentally friendly, has a small footprint, and is inexpensive to implement in arrays coupled to communicators suitable for any number of monitoring and warning functions such as snow avalanche and landslide early warning.

Serial No.: 10/211,582.

Date: 8/5/2002.

4. *Title:* Autonomous System and Method for Efficiently Collecting Fugitive Airborne Emissions From Open Vessels. An autonomous pushed liquid recirculation system (APLRS) is installed in a vessel, such as an electroplating tank. It situates around the interior perimeter and adjusts to changes in the level of liquid, maintaining the same location and orientation respective to the liquid's surface. It establishes a current near the surface that pushes liquid across the narrow horizontal dimension of the tank from a front wall to a rear wall. The current serves to push any bubbles resultant from operations within the tank to the rear wall. Over the rear wall is mounted an abbreviated exhaust hood covering only a short width of the surface of the tank along the rear wall. Because the exhaust system has to scavenge only a portion of the surface since all bubbles now burst along the rear wall, a much smaller air handling apparatus may be specified with an attendant savings in energy costs.

Serial No.: 10/224,232.

Date: 8/20/2002.

5. *Title:* Device and Method for Simulating Natural Cues so That Waterborne Fauna Avoid Manmade Barriers. The method of adding natural hydrodynamic cues to fish diversion screens similar to cues produced by the flow of water over rough, stream beds is described. Fish detect the cues and avoid contacting or impinging on the screen surface in the same way that they avoid collision with natural features of stream channels. One design features that uses the method of adding natural cues is described. The feature consists of a series of rectangular plates that are attached to the u-clips beneath diversion screens that provide structural support to the individual bars that comprise the screen. The plates are oriented so that they are approximately perpendicular to the flow lines approaching the screen surface. The flow contacts the plates and, because the orientation of the plate creates an unstable hydraulic field, the flow alternately slips above and below the plates. This hydrodynamic oscillation extends above the screen surface and creates fluctuating local acceleration zones. These small-scale flow instabilities can be detected by fish prior to their contact with the screen surface and will cause the fish to navigate away from the screen surface without contacting the screen. Fish are guided by the signals generated by the screen reducing the danger of injury or death by collision with the screen surface or supporting structure.

Serial No.: 10/226,555.

Date: 8/20/2002.

6. *Title:* Bullet Trapping Medium and System. A backstop for decelerating and trapping projectiles generally includes a support structure having an inclined surface and a projectile trapping medium disposed on the inclined surface. The projectile trapping medium may be either a resilient granular ballistic medium or a combination of a ballistic medium with a hydrated super absorbent polymer (SAP) gel. Preferably, the support structure is made of a shock absorbing, foamed, fiber-reinforced concrete, such as SACON. In embodiments, the support structure also includes an enclosure. Additives may also be mixed into the projectile trapping medium to control alkalinity and prevent leaching of heavy metals.

Serial No.: 10/307,427.

Date: 12/2/2002.

7. *Title:* Methods and Devices for Optically Recording and Imaging Representations of Interactions of an Object With its Environment. Using an array of optical sensors affixed to measure interactions on a surface of an object, in combination with a specially configured personal computer, dynamic mapping of interaction is provided. One application maps washover of an object towed in a large body of water. Data are collected on optical characteristics of the interaction such as reflectivity at a boundary. For example, in one

embodiment the reflectivity at an optical fiber/seawater boundary is compared to that of an optical fiber/air boundary and dynamic measurements made using an optical time domain reflectometer (OillR). These data are then processed using specialized software to yield representation of the dynamics (spatial and temporal) of selected washover events on a surface of interest. The system specifically provides a real-time representation of washover, including two and three-dimensional visualization of washover, as well as recording selected data for future use. Methods of employment of the system are also provided.

Serial No.: 10/318,129.

Date: 12/13/2002.

8. *Title:* Systems, and Methods of Use, Employing Distorted Patterns to ascertain the Shape of a Surface, for Road or Runway Profiling, or as Input to Control Pro-active Suspension Systems. Provided in a preferred embodiment is an application of phase or ''shadow'' profilometry to determine a 3–D profile of structure instantaneously. In one application, a vehicle-mounted system captures a 3–D profile while operating normally. The system may use a digital camera, a computer for processing and storage, a broadband light source, and a device positioned between the light and structure that enables strips of light to impinge on the structure. A preferred embodiment uses a single straight edge as the device, casting a straight line shadow. In addition to profiling road surfaces, the bottom of hydraulic models have been profiled even while being disturbed with a wave generator. It may be integrated with other devices such as a pro-active suspension system for civilian, military, and construction vehicles. Further, use with tiltmeters and GPS receivers provides data useful for engineering or construction management.

Serial No.: 10/318,214.

Date: 12/13/2002.

9. *Title:* Method and Instrument for Electronically Recording, and Imaging Representations of Interactions of an Object With its Environment. Using an array of electrically isolated electrode pairs in combination with a specially configured processor, *e.g.*, a personal computer, continuous real-time acquisition, processing, mapping and visualization of an object's interaction with its environment are provided. In a specific application, washover data are collected on salient electrical characteristics of seawater accumulating between electrodes of an electrode pair, one of which may be a common ground plane. For example, in one embodiment, the resistance of seawater is measured dynamically at each electrode pair. These data are then processed using specialized software to yield representation of the dynamics of selected washover events on a surface of interest. Described systems specifically provide real-time spatial and temporal representations of interaction, including two and three-dimensional visualization of the interaction, *e.g.*, washover, as well as recording selected data for future use. Methods of employment of the systems are also provided.

Serial No.: 10/318,297.

Date: 12/13/2002.

10. *Title:* Self-Healing Coating and Microcapsules to Make Same. A liquid self-healing coating, incorporating microcapsules filled with tailored repair formulations, repairs itself upon physical compromise after curing. In one embodiment, a commercially available paint primer is mixed with a pre-specified amount of these microcapsules. After the coating has cured on the substrate to which it is applied, any physical compromise of the cured coating results in the microcapsules bursting to release a liquid that fills and seals the compromised volume of the coating. In applications where paint is used to provide corrosion protection, the liquid contains anti-corrosion material as well as suitable diluents and film-forming compounds. In another embodiment, the microcapsules may be provided separately to enhance commercially available products. For example, if a paint formulation is known *a priori*, specifically configured microcapsules packaged separately from the paint and designed for use with the paint formulation, may be added to the commercially available product just prior to application.

Serial No.: 10/377,642.

Date: 3/4/2003.

11. *Title:* Fusion of Data From Differing Mathematical Models. A procedure automatically resolves vertical differences commonly found when merging and combining Digital Elevation Models (DEMs) from different collection and production systems. These systems may employ technologies used in single pass Interferometric Synthetic Aperture Radar (IFSAR), Light Detection And Ranging (LIDAR), and photogrammetry, as well as DEMs derived from contour based elevation data and GPS point data. This procedure employs sophisticated software checking routines for automatically identifying horizontal and vertical datums used by the differing systems as well as any geoid models employed by them. Normally, all of these sources use different vertical datums and may use different horizontal datums. A preferred embodiment of the present invention automatically recognizes the vertical datums, including those that are associated with the geoid models and the 3–D datums that conventional GIS does not support at present.

Serial No.: 10/395,168.

Date: 3/25/2003.

12. *Title:* Detecting, Classifying, and Localizing Minor Amounts of an Element Within a Sample of Material. Minute amounts of material, such as a contaminant, are detected, identified and located using a single procedure that eliminates the need for using complex and sometimes redundant instrumentation setups, multiple (and sometimes overlapping) analytic processes, or both. In a preferred embodiment, a series of processing steps enables one to detect, identify, and localize minute amounts of particular elements, *e.g.*, contaminants, in material being tested. Data sets, suitable for characterizing components of samples at least spectrally and spatially, are collected from at least one uncontaminated sample of material (the ''baseline'' or ''control'') and a sample of material under test (MUT) that may contain contaminants. Comparison of these data sets, using the procedures of the present invention, enables ready identification of minute amounts of material in any sample. The use of existing conventional procedures may require that multiple sets of data be taken or multiple processes be applied.

Serial No.: 10/406,159.

Date: 4/3/2003.

13. *Title:* Improved Method and System for Dewatering Particulate Materials. A system and method for dewatering particulate materials employs an improved dewatering probe generally including a single non-conducting pipe having a plurality of holes or slots, an anode mounted on the pipe adjacent one end of the pipe, and a cathode mounted on the pipe adjacent the opposite end of the pipe. The pipe serves as both a sonde for mounting the anode and cathode and as a well for extracting water that collects around the outside of the pipe and flows into the interior of the pipe through the holes or slots via gravitational and electro-osmotic forces. A pump may be used to extract both collected water and accumulated electrolytic gases from the pipe's interior. In embodiments, an array of guide electrodes is mounted on the pipe in addition to the anode and the cathode in order to deflect the major current flow out into the body of surrounding particulate materials. The guide electrodes also facilitate rapid

depolarization of the probe. An array of probes according to the present invention may be employed as a system to dewater a volume of particulate.

Serial No.: 10/421,922.

Date: 4/24/2003.

14. *Title:* Devices and Methods for Reducing or Eliminating the Gap Between a Stay Vane and its Corresponding Wicket Gate as Used in Turbines. An improved design for turbines increases efficiency while reducing potential for fish kill. In a preferred embodiment as relates to a Kaplan turbine, the gap between stay vanes and their corresponding wicket gates is reduced or eliminated by provision of an extension to the trailing edge of the stay vane. In alternative embodiments, the extension may be added to the wicket gate or affixed to both in an arrangement that permits free movement of the wicket gate. To facilitate eliminating the gap altogether, the extension may be made of a pliable material or be fabricated in a telescoping or accordion arrangement to permit contact with opposing parts without damage thereto. By designing extensions using accepted hydraulic principles, a better fit of the stay vane to its associated wicket gate, and possibly to the turbines runners may be effected, further improving operational efficiency and possibly even extending maintenance intervals.

Serial No.: 60/442,551.

Date: 1/27/2003.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–24255 Filed 9–25–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,690,963: Freeze Dried Red Blood Cells, Navy Case No. 76,391 and U.S. Patent No. 5,736,313: Method of Lyophilizing Platelets by Incubation with High Carbohydrate Concentrations and Supercooling Prior to Freezing, Navy Case No. 76,086.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Paul A. Regeon, Acting Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-Mail: *regeon@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 22, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–24376 Filed 9–25–03; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act; Notice of Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) two meetings described below. The Board will also conduct a series of public hearings pursuant to 42 U.S.C. 2286b and invites any interested persons or group to present any comments, technical information, or data concerning safety issues relates to the matters to be considered.

TIME AND DATE OF MEETING: 9 a.m., October 21, 2003, and 9 a.m., October 23, 2003.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meetings will be presented live throughout Internet video streaming. A link to these presentations will be available on the Board's Web site (*http://ww.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussions be conducted in a meeting, the Board has determined that open meetings in this specific case further the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board has been reviewing the Department of Energy's (DOE) current oversight and management of the contracts and contractors it relies upon to accomplish the mission assigned to DOE under the Atomic Energy Act of 1954, as amended. We will focus on what impact, if any, DOE's new initiatives may have upon assuring adequate protection of the health and safety of the public and workers at DOE's defense nuclear facilities. The second and third public meetings will collect information needed to understand and address any health or safety concerns that may require Board action. This will include, but is not limited to, presentations by DOE and the National Nuclear Security Administration (NNSA) to explain their contract management and oversight initiatives, presentations by Federal and industry experts in Federal contracting for essential and high risk government services; and possibly further presentations by Board staff.

The Board has identified several key areas that will be better examined in public meetings. For example, during the October 21st meeting, DOE and NNSA will discuss their new approaches which increase DOE's and NNSA's reliance upon contractor self-assessment programs while decreasing Federal oversight. During the October 23rd meeting, the Board will hear from representatives from the aerospace industry. The information gathered at that time will explore Federal contract management and oversight experience and will provide relevant reference experience.

In subsequent public meetings, the Board will explore in more depth the field application of Federal management and oversight policies being developed by DOE and NNSA for defense nuclear facilities. The public hearing portions are independently authorized by 42 U.S.C. 2286b.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearings may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on October 20, 2003, will be scheduled for time slots, beginning at approximately 11:30 a.m., for the October 21st meeting. Those who contact the Board prior to close of business on October 22, 2003, will be scheduled for time slots, beginning at approximately 11:30 a.m., for the October 23rd meeting. The Board will post a schedule for those speakers who have contacted the Board before each hearing. The posting will be made

at the entrance to the Public Hearing Room at the start of each 9 a.m. meeting.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC, office. The Board will hold the record open until November 24, 2003, for the receipt of additional materials. Transcripts of the meetings will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meetings and hearings, to recess, reconvene, postpone, or adjourn the meetings and hearings, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: September 24, 2003.

John T. Conway,

Chairman.

[FR Doc. 03–24637 Filed 9–24–03; 3:56 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 27, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 23, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: National Early Intervention Longitudinal Study (NEILS).

Frequency: Semi-annually; annually; biennially.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 634.

Burden Hours: 267.

Abstract: NEILS will provide the first national picture of the experiences and outcomes of infants/toddlers in early intervention. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers of children who received early intervention services.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2310. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–24413 Filed 9–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Solicitation Number DE–PS36–03GO93016]

Hydrogen Education Development

AGENCY: Golden Field Office, U.S. Department of Energy (DOE).

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: The Hydrogen, Fuel Cells, and Infrastructure Technologies Program of the Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy is soliciting financial assistance Applications with the objective of contributing to industry efforts and the President's Hydrogen Fuel Initiative in developing a path to a hydrogen economy. DOE intends to provide financial support for this effort under authority of the Department of Energy Organization Act, Pub. L. 95–91. DOE is soliciting Applications for hydrogen education development activities.

DATES: The Solicitation was issued on September 13, 2003 with a closing date on December 4, 2003.

ADDRESSES: To obtain a copy of the Solicitation, interested parties should access the DOE Industry Interactive Procurement System (IIPS) Web site. The Solicitation can be obtained directly through IIPS at *http://e-center.doe.gov* by Browsing Opportunities by Program Office, (Enter IIPS), Financial Assistance, Golden Field Office, and then selecting this Solicitation number. DOE will not issue paper copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: James Damm, Contracting Officer, via

facsimile to (303) 275–4788 or electronically to *james.damm@go.doe.gov.* Solicitation questions must be submitted through IIPS per the instructions contained in the Solicitation. Responses to questions will be posted on the IIPS Web site. Further information on DOE's Hydrogen, Fuel Cells, and Infrastructure Technologies Program can be viewed at *http://www.eere.energy.gov/hydrogenandfuelcells.*

SUPPLEMENTARY INFORMATION: Under this Solicitation, DOE seeks Applications for four specific activities intended to educate key target audiences, including teachers, students, and the public about the use of hydrogen as an energy carrier and the future path to a hydrogen economy.

Awards under this Solicitation will be Grants or Cooperative Agreements with terms of one to five years beginning in Fiscal Year 2004. Subject to the availability of annual congressional appropriations, the total cumulative DOE funding available under this Solicitation for all projects is anticipated to be between $1 million and $3.5 million over the five-year period. The minimum required cost share varies by specific activity and will be specified in the Solicitation.

Issued in Golden, Colorado.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–24349 Filed 9–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue a Financial Assistance Solicitation No. DE–PS26–04NT41898 entitled ''Support of Advanced Coal Research at U.S. Colleges and Universities.'' Pursuant to 10 CFR 600.6(b), DOE has determined that issuance of this financial assistance solicitation on a restricted eligibility is necessary and appropriate.

In support of advanced coal research to U.S. colleges and universities, financial assistance awards under this Program Solicitation are intended to maintain and upgrade the education, training, and research capabilities of our colleges and universities in the fields of science, environment, energy, and technology related to coal. The involvement of professors and students generates fresh research ideas and enhances the education of future scientist and engineers.

DATES: The solicitation will be available for downloading on the DOE/NETL's Home page at *http://www.netl.doe.gov/business* and the IIPS ''Industry Interactive Procurement System'' Internet page located at *http://e-center.doe.gov* on or about September 26, 2003. Applications must be prepared and submitted in accordance with the instructions in the Program Solicitation and must be received by November 6, 2003. Prior to submitting your application to the solicitation, periodically check the NETL Web site for any amendments.

FOR FURTHER INFORMATION CONTACT: Jodi L. Collins, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, *E-mail Address: jodi.collins@netl.doe.gov. Telephone Number:* (304) 285–1390.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE–PS26–04NT41898, the DOE is interested in applications from U.S. colleges and universities, and university-affiliated research centers submitting applications through their respective universities. Applications will be selected to complement and enhance research being conducted in related Fossil Energy programs. Applications will be subjected to a merit review by a technical panel of DOE subject-matter experts and external peer reviewers. Awards will be made to a limited number of applicants based on: The scientific merit of the applications, application of relevant program policy factors, and the availability of funds.

Eligibility

To assure this Program continues to support the performance of high quality fundamental research by professors and students at U.S. colleges and universities, applications must be submitted by U.S. colleges, universities, and university-affiliated research institutions provided the following criteria are met:

- Principal Investigator or a Co-Principal Investigator listed on the application is a teaching professor at the submitting university. If this condition is met, other participants, including Co-Principal Investigators or research staff, who do not hold teaching positions may be included as part of the research.
- Proposals from university-affiliated research institutions must be submitted through the college or university with which they are affiliated.
- At least one student registered at the university is to receive compensation for work performed in the conduct of research proposed in the Core and the Innovative Concepts Phase-II Subprograms. This criterion is not applicable in the Innovative Concepts Phase-I Subprogram where the grants are of shorter duration and funded at lower levels to develop unique ideas applicable to coal utilization and conversion.
- Under the Innovative Concepts Phase-I Grants, research may be done by either the Principal Investigator, postdoctoral students, or graduate students.

Additional restricted eligibility is also imposed on the Innovative Concepts Phase-II Grants. Only Innovative Concepts Phase-I grantees will be eligible to compete for subsequent Phase-II continuation of their Phase-I projects.

Background

FY 2004 Focus Areas/Technical Topics

The current landscape of the U.S. energy industry, not unlike that in other parts of the world, is undergoing a transformation driven by changes such as deregulation of power generation, more stringent environmental standards and regulations, climate change concerns, and other market forces. With these changes come new players and a refocusing of existing players in providing energy services and products. The traditional settings of how energy (both electricity and fuel) is generated, transported, and utilized are likely to be very different in the coming decades. As market, policy, and regulatory forces evolve and shape the energy industry both domestically and globally, the opportunity exists for university, government, and industry partnerships to invest in advanced fossil energy technologies that can return public and economic benefits many times over. These benefits are achievable through the development of advanced coal technologies for the marketplace.

Energy from coal-fired powerplants will continue to play a dominant role as an energy source, and therefore, it is prudent to use this resource wisely and ensure that it remains part of the sustainable energy solution. In that regard, our focus is on pathways to clean, affordable energy achieved through a combination of technology evolution and innovation aimed at creating the most advanced collection of

flexible, clean, efficient, competitively priced coal-derived products, and low-cost environmental compliance energy systems. Subsequently, this focus remains key to this nation's continuing prosperity and our commitment to tackle environmental challenges, including climate change. It is envisioned that these advanced systems can competitively produce low-cost electricity at efficiencies higher than 60% with coal. This class of facilities will involve ''near-zero discharge'' energy plants—virtually no emissions will escape into the environment. Sulfur dioxide and nitrogen oxide pollutants would be removed and converted into environmentally benign substances, perhaps fertilizers or other commercial products. Carbon dioxide could be (1) concentrated and either recycled or disposed of in a geologically permanent manner, or (2) converted into industrially useful products, or (3) by creating offsetting natural sinks for CO_2.

Coal-fired powerplants remain the major source of electricity for the world while distributed generation, including renewables, will assume a growing share of the energy market. Technological advances finding their way into future markets could result in advanced co-production and co-processing facilities around the world, based upon Vision 21 technologies developed through universities, government, and industry partnerships.

Recent improvements within advanced coal-based power systems, in many ways is the culmination of decades of power and fuels research and development (R&D). The most advanced systems have the full energy potential of fossil fuel feedstocks and ''opportunity'' feedstocks such as biomass, petroleum coke, and other materials that might otherwise be considered as wastes, can be tapped by integrating advanced technology ''modules.'' These technology modules include fuel-flexible coal gasifiers and combustors, gas for fuels and chemical synthesis and can be built in the configuration best suited for its market application by combining technology modules. Designers of these systems would tailor their use of the desired feedstocks and produce the desired products by selecting and integrating the appropriate ''technology modules.''

The DOE goals for these advanced systems are to effectively eliminate, at competitive costs, environmental concerns associated with the use of fossil fuel for producing electricity and transportation fuels. Research objectives for these advanced power systems are based on three premises: that we will need to rely on fossil fuels for a major share of our electricity and transportation fuel needs well into the twenty-first century; that it makes sense to rely on a diverse mix of energy resources, including coal, gas, oil, biomass and other renewables, nuclear, and so-called ''opportunity'' resources, rather than on a reduced subset of these resources; and that R&D directed at resolving our energy and environmental issues can find affordable ways to make energy conversion systems meet ever more strict environmental standards.

To develop and sustain a national program of university research that advances the previously stated objectives, DOE is interested in innovative and fundamental research pertinent to coal conversion and utilization. To accomplish the program objective, applications will be accepted in three program areas: (1) The Core Program and (2) The Innovative Concepts Phase-I Program, and the Innovative Concepts Phase-II Program.

Core Program

The DOE anticipates funding at least one proposal in each focus area under the Core Program; however, DOE reserves the right not to fund any of the proposals in a given area if they do not meet programmatic needs of the agency. Additionally, high-quality proposals in a higher ranked focus area may be given more consideration during the selection process. Research in the Core Program is *limited* to the following six (6) focus areas and are listed in descending order of programmatic priority:

Materials for Advanced Fossil Energy Systems

New materials, ideas, and concepts are required to significantly improve performance and reduce the costs of existing advanced power systems or to enable the development of new systems and capabilities for coal combustion and coal gasification, gas separations, hydrogen storage, high-temperature fuel cells, and advanced turbine systems. Materials' issues are related to operation in the hostile conditions created when fossil fuels are converted to energy. These conditions include high temperatures, elevated pressures, pressure oscillations, corrosive environments (oxidizing or reducing conditions, gaseous alkali, chloride or sulfur-containing species), surface coating or fouling, and high particulate loading. The following topics are of interest in this solicitation:

(a) Computer-Aided Design of High-Temperature Materials

The quest for high-temperature materials is one of the dominant themes in materials development for efficient energy systems. High-temperature materials is a fast-moving research area with numerous practical applications. Materials that can withstand extremely high temperatures and extreme environments are generating considerable attention worldwide; however, designing materials that have low densities, elevated melting temperatures, oxidation resistance, creep resistance, and intrinsic toughness encompass some of the most challenging problems in materials science. The search for high-temperature materials is largely based on traditional, trial-and-error experimental methods which are costly and time-consuming. An effective way to accelerate research in this field is to use advances in materials simulations and high performance computing and communications to guide experiments. This synergy between experiment and advanced materials modeling will significantly enhance the synthesis of novel high-temperature materials. The studies should only address materials of interest to fossil energy conversion systems.

(b) Coatings for Coal-Fired Environments

Coatings with superior corrosion resistance in oxidizing, sulfidizing, carburizing and water-containing environments are needed to sustain the life of advanced energy systems. They are of particular interest for improving the corrosion resistance of Fe- and Ni-base alloys to achieve higher operating temperatures in fossil energy systems where sulfur and water vapor can cause severe oxidation problems. For optimum utilization of new coatings, one needs sufficient data about their potential benefits in terms of lifetime and applicable environments. In order to address that issue, model coatings need to be fabricated for corrosion testing and diffusion studies aimed at developing a comprehensive lifetime evaluation approach for the coatings. At least one ferritic and one austenitic alloy should be selected as substrate materials for study. Additionally, nickel-based superalloys are also of interest.

(c) Materials for Hydrogen Storage

Another critical need of advanced energy systems, is the development of materials for hydrogen storage. These may include alloys and intermetallics, sodium and lithium alanates, nanocubes, carbon nanotubes or other emerging materials. Factors that are relevant for useful materials are hydrogen storage density and stability at

commercially relevant conditions of temperature and pressure. Experimental studies should include analytical methods such as XRD, SEM, TEM and pressure-composition isotherm measurements to determine the phase purity, microstructure and hydrogen absorption characteristics. The investigations should aim to optimize the hydrogen absorption characteristics, such as the amount of hydrogen absorbed, the plateau pressure and kinetics by modifying the composition of the material and its microstructure.

Sensors and Control

DOE/NETL's Advanced Research Program is aimed at bridging the gap between the basic sciences and applied research as it relates to fossil energy applications. One area in which this transitional fundamental type research is needed is in the area of novel high temperature materials that can be used in the fabrication of miniaturized in-situ sensing devices for the measurement of various gas species.

Available sensors for measuring gaseous emission of CO, CO_2, HC's, Hg, H_2S, NO_X, etc. cannot withstand the high temperature, hostile environments found in advanced fossil energy systems. Experimental research projects are sought for the development of materials suitable for the production of low cost disposable sensors which can be used in a ''plug and play'' fashion for the detection of various fossil fuel gases under high temperature (>500 °C) and high pressure (200 psi) conditions. Fundamentally-based research programs focused on new materials (including material matrices, functionalized or coated substrates, doped ceramics, nano derived micro structures) such that the bulk properties of the material can be utilized in miniaturized devices with sensing characteristics at high temperature are encouraged.

The long term envisioned use of the materials will be to fabricate low cost micro sensors that can be used and easily replaced after 180–360 days of exposure to the harsh conditions found in ultra clean fossil energy applications. Hence the promising candidates identified as a result of this fundamental research will be explored to address cost associated with the development and fabrication processes that would provide sensing devices for commercial applications.

While revolutionary ideas that have the sound scientific basis to support significant advancements in this area are sought, experimental studies with material systems in which the sensing properties are understood are discouraged.

Measurement and Technology for Gasification

To sustain our nation's economic growth, utilization of our most abundant fossil energy resource, coal, in an efficient and environmentally responsible manner is needed. Consequently, the DOE is supporting the development of advanced technology power plants that offer higher efficiency, lower emissions, and reduced capital and operating costs. Gasification technologies are key to addressing several of the advanced technologies issues of clean production of electric power, hydrogen for the new ''hydrogen economy,'' and industrial chemicals or refined fuels while reducing the impacts on water resources, solid waste disposal, and capturing carbon dioxide (CO_2) that is generated in the use of fossil fuels. To meet the demands of the Hydrogen Initiative, the requirements for fuel cell and advanced turbine power units, and to meet the increasingly stringent environmental regulations, the synthesis gas produced by gasification will need to be cleaned to tighter specifications. At the same time, the gasification and gas cleanup processes will need to have reduced costs, improved reliability, and the ability to be readily integrated for increased efficiency. These improvements will enable the integration of advanced concepts for high-efficiency power generation and pollution control into a class of fuel-flexible facilities capable of operating with near zero environmental emissions. Based on gasification, there are a variety of configurations to meet differing market needs, including both distributed and central generation of power. The development and optimization of advanced coal gasifiers will be critical to the success of this program. This topic seeks to develop key support technologies and measurement techniques for these gasifiers. Grant applications are sought only in the following subtopics:

a. Advanced Refractory Systems for Gasification Systems

Refractory liners in high temperature slagging gasifiers are known to undergo significant deterioration over a relatively short period of time, requiring considerable maintenance. Depending upon the operating temperature of the gasifier, plant size, and the feedstock, refractory liners last only 6–18 months and cost over $1 million in materials, manpower, and lost revenues to replace. Therefore grant applications are sought to develop advanced refractory systems or new materials with an expected useful life of three or more years. Of particular interest are materials with the ability to withstand multiple feed stocks such as coal, biomass, and petroleum coke, and materials that contain no chromium.

b. On-Line Flow and Composition Measurements for Gasification Systems

The ability to measure, control, and quickly respond to fluctuations in the flow quantities and composition of feed streams to gasifiers and in the synthesis gas product stream can be crucial to maintaining performance to design standards and keeping the production of gasifiers on-stream at high capacity factors. Real-time and on-stream measurements are likely to be helpful in identifying systems upsets and responses to protect downstream equipment. Grant applications are sought to develop robust on-line measurement and control systems for (1) feeding abrasive and eroding solids across pressure barriers to 1000 psi into gasifiers, and for (2) product synthesis gas streams at high temperatures (to 2500 °F) and high pressure (to 1000 psi) laden with aggressive particulates. Gasifier feeds are typically water slurries with loadings of 50 to 70% solids, or pneumatically fed dry pulverized solids. The feed may contain coal, pet coke, coal-pet coke mixtures (typical 50–50%), water as slurry agent, or biomass (typically 10–20%). On-line measurements of feed quantities and composition should address attributes such as particle size distribution, particle loading, coal/pet coke/biomass composition changes, and amount of water. The synthesis gas product will typically contain bulk constituents (CO, CO_2, H_2, H_2O, CH_4), major contaminants (H_2S, COS, NH_3, Cl), and trace contaminants (Hg, As, Se, V, Ni). On-line measurement of any or all of these constituents at gasifier exit conditions of high temperature and pressure will enable more direct control of the operation of the gasifier.

c. Novel CO_2 and/or Hydrogen Separation Technology

One vision of clean energy in the future is to make hydrogen from coal in an ultra-clean production plant. In this vision, coal is gasified using oxygen, and the resultant syngas (mostly CO, H_2 and H_2O) is then turned into a stream of predominantly H_2 and CO_2 through the water-gas-shift reaction. The purpose of hydrogen separation technology is to economically transform this mixed gas into two pure streams: One of H_2, and one of CO_2. The mixed gas stream is expected to be 450–500 °F and 300 psi. Most current projects in

hydrogen separations are membrane processes. The only non-membrane process is the hydrate process, which must operate at low temperatures. This solicitation seeks completely novel CO_2 and/or H_2 separation technologies, with particular interest in technologies that maintain CO_2 pressure and do not require a significant drop in temperature.

Partitioning and Mechanism Studies for Mercury and Associated Trace Metals Within Coal-Fired Processes

Understanding mercury chemistry and process-related speciation mechanisms and transformations in laboratory experiments provide necessary steps to first understanding partitioning and subsequently developing mercury removal processes for advanced power systems, *i.e.*, industrial and coal-fired applications for PC-boilers, cyclone boilers, tangentially-fired boilers, fluidized-bed boilers and gasification processes. Past research has shown a reasonable link between mercury speciation and several parameters including the various constituents of fly ash (*i.e.*, unburned carbon/ LOI); fly ash properties (such as fly ash alkalinity); and process specific information (coal rank, boiler type, flue-gas temperature, Cl concentration, NO_X concentration, sulfur compounds, and CO/CO_2 concentrations). Grant applications are sought to further understand partitioning and chemistry of mercury and other trace metal and organic substances in coal-fired (bituminous, subbituminous, and lignite) systems. Specifically, modeling or experiments using statistical analysis of these identified parameters on chemical intermediaries and mechanisms is sought.

Solid Oxide Fuel Cells (SOFC) Sealing Systems

A secure future for our Nation depends on the continued availability of reliable, affordable, and environmentally-safe technologies for production of energy from advanced power systems, such as fuel cells. Solid oxide fuel cells are capable of operating on a variety of fossil fuels, including coal derived synthesis gas. Currently, numerous SOFC design concepts are under development by industry. These industrial developers have identified sealing as a top-priority technical barrier in their efforts to commercialize advanced power generation systems based on solid oxide fuel cell technology and operating on coal and other fossil fuels. These seals have a demanding set of imposed performance criteria due to the extreme SOFC operation environment. The seals must prevent the mixing of fuel and oxidant streams as well as prevent reactant escape to the surrounding environment. The seal material must have a low electrical conductivity and be mechanically and chemically stable under reducing/oxidizing/wet conditions, as well as with oxidizing and reducing environments separated by the seal. Of particular importance is the ability to seal, with adequate bond strength, materials (*e.g.* Fe-Cr alloys, Ni-YSZ cermet and LSM) with differing coefficients of thermal expansion (CTE), and do so while exposed to temperature transients over a range from room temperature up to SOFC operating temperature (~850 °C). In addition, the seals must accommodate the thermal expansion of the fuel cell caused by temperature gradients in the direction of fuel flow, the result of the electrochemical reaction, without imposing excessive stresses within the cell. In the case of auxiliary power unit (APU) and mobile applications, the seals must be resistant to thermal shock in order to permit a rapid ($\simeq$10 minutes) transition from ambient to operating temperature, and in the latter case, vibration. The seal material must be capable of a service life of more than 40,000 hours and hundreds of thermal cycles for stationary systems, or at least 5,000 hours and 3,000 thermal cycles for transportation systems.

Current state-of-the-art sealing concepts utilizing glass or glass-ceramic materials have been largely successful in meeting performance requirements in the *short-term.* The viscous, wetting behavior of glass facilitates hermetic sealing, and glass-ceramics avoid viscous flow and uncontrolled, progressive crystallization during operation. The properties of these materials (CTE, T_g for glasses) can be affected via composition/structure modifications. Furthermore, glasses are relatively inexpensive and easily fabricated.

However, *long-term* performance under thermal cycling has been unsatisfactory. Glasses and glass-ceramics are brittle; consequently, thermal stress-induced bulk microcracking of the seal, resulting from as few as one start-up/shut-down/start-up cycle, may cause unacceptable reactant leakage. Furthermore, these stresses are affected by a host of factors, including the cell/interconnect/seal geometry and the unique component material properties of the particular SOFC stack design. The potential for seal fracture is exacerbated by the potential chemical reaction of glass with metal interconnects, resulting in the formation of interfacial compounds and/or extensive porosity in the glass near the glass/metal interface.

Glass, glass-ceramic, ceramic-filled glass composite, metal-filled glass composite and/or ceramic-filled metal composite based seal materials and systems are sought with significantly improved long-term durability under SOFC operating conditions, with particular emphasis placed upon the ability of the seal or seal system accommodate dimensional changes of cell components resulting from thermal transients (shock) and thermal gradients. Material composition and/or structure modifications may potentially possess the capability to accommodate larger displacements, local dimensional variations and material movement. In addition, these materials must be chemically and physically stable in a high temperature reactive environment. The seal material must be compatible with the cell and interconnect materials of the particular SOFC system design. The ultimate objective is the development of an economically-practical seal material/system that can provide hermetic sealing under all operating conditions for the life of planar SOFC stacks.

Financial assistance applications are sought to research and develop glass, glass-ceramic, ceramic-filled glass composite, metal-filled glass composite and/or ceramic-filled metal composite based seal materials and systems to address planar SOFC sealing needs. Of particular interest are novel seal concepts focusing on seal material composition and structure with an emphasis on attaining long-term durability under typical SOFC operating conditions. Emphasis in this solicitation is on investigating and developing viable sealing materials for us with synthesis coal gas compositions feed to SOFC. Current Solid-State Energy Conversion Alliance (SECA) program goals require a seal service life of more than 40,000 hours and hundreds of thermal cycles for stationary systems, or at least 5,000 hours and 3,000 thermal cycles for transportation systems. Effective sealing concepts must perform under high temperature, chemically reactive conditions and need to accommodate thermal transient/ gradient-induced movement of cell and stack components and enclosures while minimizing transmission of structural loads to delicate cell components. Proposed approaches should combine analysis and experimentation to establish theoretical limits, and to evaluate the practical limit of the sealing concept. Manufacturability and

cost are also critical factors in meeting SECA program goals.

Turbine Combustion: Flashback

In support of the Turbine Program, advanced power systems has goals of very low plant emissions (NO_X less than 2-ppm) and turbine combustors capable of stable operation with fuel compositions ranging from natural gas to a broad range for syngas. Although syngas has wide composition variability, the following gives an example of representative properties for a fuel gas from oxygen blown coal gasification: 25% H_2, 40% CO, 20% H_2O, and 200 BTU/ft^3 lower heating value.

The primary goal for the research is to provide fundamental information and data, or computational tools, that will enable design of turbine combustors with improved stability and emissions. Proposed research should give highest priority to addressing fuel composition and variability issues associated with use of syngas and alternate fuels in gas turbine combustors.

Flashback is an issue for premixed combustors, both in terms of increased emissions and hardware damage. Proposals are sought in this topic for achieving premixing without excessive pressure drop and suitable fuels with a variety of flame speeds, including syngas and hydrogen. Research of interest includes:

- The effect of syngas compositions and percentage concentrations of higher hydrocarbons in natural gas on the propensity of a premixed flame to flashback. Of particular interest is the propensity to flashback in the presence of combustion oscillations (either self-excited or externally driven).
- Measurement of flashback characteristics representing various fuels and fuel compositions (IGCC syngas, natural gas composition variations, liquid fuels, *etc.*), especially for high pressures and in the 700 to 950K temperature range. Of special interest is the effect of higher concentrations of H_2 in syngas on flashback.

Innovative Concepts Phase-I Program

The DOE anticipates funding at least eight awards under the Phase-I Program. In the twenty-first century, the challenges facing coal and the electric utility industry continue to grow. Environmental issues such as pollutant control, both criteria and trace pollutants, waste minimization, and the co-firing of coal with biomass, waste, or alternative fuels will remain important. The need for increased efficiency, improved reliability, and lower costs will be felt as an aging utility industry faces deregulation. Advanced power systems, such as a Vision 21 plant, and environmental systems will come into play as older plants are retired and utilities explore new ways to meet the growing demand for electricity.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. Innovative Concepts applications will be accepted in any of the six (6) focus areas listed in the Core Program above or the four (4) technical Innovative Concepts Phase-I Program areas listed below. The focus areas under the IC program are not listed in any programmatic priority.

Innovative Concepts Phase-I Technical Topics

Water Impacts From Coal-Burning Power Plants

Producing electric power from coal has impacts to water quality from the beginning of the process, mining the coal, to the disposal of ash remaining after the coal has been combusted. Coal mining has left large amounts of overburden wastes that contain sulfide minerals that weather to form sulfuric acid. Many of these areas are causing problems with water quality and re-vegetation. It is estimated that 10,000 miles of streams in the United States are affected by acid mine drainage. The EPA has initiated a Total Maximum Daily Load (TMDL) program to restore impaired water bodies, some of which are degraded from past mining. Coal washing is used to remove pyritic sulfur and other impurities that could be emitted into the air; however, wastewater from this process may release these substances to water bodies. A large quantity of water is used in power plants to condense the steam leaving the turbine. Once-through cooling systems can damage aquatic life and add heat to streams. The EPA has developed new regulations under the Clean Water Act, section 316(b), to reduce once through cooling usage of water and improve cooling water intake structures. Re-circulating cooling towers require the addition of biocides and corrosion inhibitors, which may be released to water bodies during blowdowns. Wet scrubbing of air pollutants from flue gas generates a large quantity of wastewater. Ash ponds have the potential for creating run-off problems and groundwater infiltration. Research opportunities for improving water quality associated with coal combustion for power generation include: (1) Novel active and passive treatment technologies to address acid mine drainage; (2) Innovative solutions to restoring abandoned mine lands to enhance watersheds; (3) Improved intake and outflow structures for cooling water; (4) Novel uses for waste heat from power plant cooling; (5) Advanced water-related sensors and controls at power plants to minimize adverse impacts to water quality; (6) Novel treatment techniques for scrubber wastewater; and (7) Novel techniques for reducing coal-washing waste and ash pond runoff.

Mercury and Associated Trace Metal Chemistry Studies Within NO_X Control Systems

By the year 2010, it is estimated that over 50% of coal-fired utilities will install either selective catalytic reduction or selective non-catalytic reduction units to meet NO_X emission limits. Understanding mercury chemistry and process-related speciation mechanisms and transformations related to NO_X control systems would provide necessary information to develop more effective, less costly mercury removal processes for industrial and coal-fired boilers. Past research has shown a probable relationship between degree of mercury oxidation and age of NO_X catalyst, coal rank, size (or residence time) of NO_X control vessel, degree of NO_X conversion, amount of SO_2 converted to SO_3, and ammonia slip. Grant applications are sought to further understand partitioning and chemistry of mercury and other trace metal and organic substances in coal-fired (bituminous, subbituminous, and lignite) systems utilizing SCR/SNCR or ammonia injection. Specifically, statistical analysis clarifying the importance of each of these identified parameters and/or their interactions on chemical intermediaries and mechanisms is sought.

Novel Uses of the Calcium Sulfate and Calcium Sulfite-Based FGD Material

In order to clean up sulfur dioxide emissions from power plants, many utilities have installed either wet or dry flue gas desulfurization (FGD) systems. Currently, the majority of this FGD material is disposed of into landfills. However, there are some utilities that market this material.

The largest reuse market of the material is in wallboard manufacturing processes.

It is estimated that in order to meet future stringent air pollution requirements, many additional utilities will install this technology in the next decade. *Grant applications are*

requested that will look at novel uses of the calcium sulfate and calcium sulfite-based FGD material.

Development of Advanced SCR Catalysts

National NO_X emissions may be capped at levels well below current emissions under proposed multi-pollutant control initiatives to address continued concerns about secondary fine particles (including those formed by reactions with NO_X) and ozone. Such proposals would essentially extend the current NO_X State Implementation Plan Call to twelve months and expand it to all 48 contiguous states. While selective catalytic reduction (SCR) is the workhorse for the largest units of the existing generating fleet in meeting current NO_X regulations, future more stringent requirements drive the need to lower the cost of this technology. Accordingly, development of advanced SCR catalyst technology that is cheaper and has fewer balance-of-plant issues than current SCR technology could offer a lower cost option for the smaller units. In order to adapt SCR technology to hard to retrofit boilers, three options are proposed for research:

a. Development of a more reactive catalyst than current commercially available catalysts that would require a smaller reactor with less catalyst and able to operate at higher gas velocities to achieve NO_X removal efficiencies of 90%.

b. Development of a catalyst that would operate at low dust conditions and temperatures experienced after the particulate removal device to achieve NO_X removal efficiencies of 90%.

c. Development of a catalyst for items (1) or (2) that has a dual function of oxidizing elemental mercury.

In both cases, it is suggested to have the reducing agent to be other than an ammonia-based reagent or methane due to their balance-of-plant issues, availability, and cost. Utilization of combustion gas constituents such as carbon monoxide would be a plus. In all cases, an economic goal of developing the technology at ¾ the levelized cost of the current state of the art SCR technology should be established.

The proposal of the successful applicants should be able to demonstrate knowledge of the process conditions of a coal-fired utility boiler equipped with low NO_X burners for the targeted area of catalyst development.

Innovative Concepts Phase-II Program

The DOE anticipates funding two to four awards in the Phase-II Program. The goal of the Phase-II Program, the principal R&D effort of the IC Program, is to solicit research that augments research previously funded through the Phase-I Program. Only the institutions receiving a Phase-I grant awarded in fiscal year 2002 will be eligible to submit an application for continuation of their Phase-I projects. The following institutions are eligible to participate in the Phase-II Program in FY04:

Drexel University
—''Ultrasensitive High-Temperature Selective Gas Detection Using Piezoelectric Microcantilevers''
University of Albany
—''Feasibility of a SOFC Stack Integrated Optical Chemical Sensor''
University of Nevada
—''Advanced Heat Exchanges Using Tunable Nanoscale-Molecular Assembly''
University of Pittsburgh
—''A Novel Concept for Reducing Water Usage and Increasing Efficiency in Power Generation''
The Pennsylvania State University
—''Reaction Mechanism of Magnesium Silicates with Carbon Dioxide in Microwave Fields''
Arizona State University
—''Simultaneous Mechanical & Heat Activation: A New Route to Enhanced Serpentine Carbonation Reactivity & Lower CO_2 Mineral Dequestration Process Cost''
University of Utah
—''Carbon Dioxide Sequestration by Mechano-chemical Carbonation of Mineral Silicates''
Iowa State University
—''Development of a Catalyst/Sorbent for Methane Reforming''
University of Maine
—''Inorganic Membranes''
University of North Dakota
—''Advanced Heterogeneous Reburn Fuel from Coal and Hog Manure''
The University of Mississippi
—''Heterogeneous Reburning by Mixed Fuels''
University of North Dakota
—''Mercury Oxidation via Catalytic Barrier Filters''
University of Pittsburgh
—''Engineered Coal Reburning in Oxidizing Environments''

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

References

1. T. Schwickert, P. Greasee, A. Janke, R. Conradt, and U. Diekmann, in Proceedings of IBSC 2000, Albuquerque, pp. 116–122 (2000).
2. K.L. Ley, M. Krumpelt, R. Kumar, J.H. Meiser, and I. Bloom, J. Mat. Res., 11, 1489–1493 (1996).
3. N. Lahl, K. Singh, L. Singheiser, K. Hilpert, and D. Bahadur, J. Mat. Sci. 35, 3089–3096 (2000).
4. L. Blum, L.G.J. de Haart, I. Vinke, D. Stolten, H.P. Buchremer, F. Tietz, G. Blaβ, D. Stöver, J. Remmel, A. Crammer, and R. Sievering, in 5th European Solid Oxide Fuel Cell Forum, Lucerne, Switzerland, ed. J Huijsmans, pp. 784–790 (2002).
5. Solid State Energy Conversion Alliance website, *http://www.seca.doe.gov/*

Issued in Morgantown, WV on September 16, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–24350 Filed 9–25–03; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6644–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed September 15, 2003 Through September 19, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030426, FINAL EIS, NOA, AK, Cook Inlet Beluga Whale Stock, Federal Actions Associated with the Management and Recovery, Implementation, Cook Inlet, AK, Wait Period Ends: October 27, 2003, Contact: James W. Balsiger (907) 271–5006.

EIS No. 030427, FINAL EIS, AFS, AK, Licking Creek Timber Sale, Timber Harvest, Implementation, Tongass National Forest, Ketchikan Misty Fiords Ranger District, Revillagigedo Island, Ketchikan, AK, Wait Period

Ends: October 27, 2003, Contact: Thomas Puchlerz (907) 228–6281.

EIS No. 030428, DRAFT EIS, NOA, Framework Adjustment 4 to the Atlantic Mackeral, Squid, and Bullfish Fishery Management Plan, Extension of the Moratorium for the Illex Fishery, Mid-Atlantic Fishery Management Council, Comment Period Ends: November 10, 2003, Contact: George H. Darcy (301) 713–1622.

This document is available on the Internet at: *http://www.mafmc.org/mid-atlantic/publications/pubs-draft.htm.*

Amended Notices

EIS No. 020386, DRAFT EIS, COE, PR, Port of The Americas Project, Development of a Deep-Draft Terminal at the Port of Ponce to Receive Post-Panamax Ships, COE Section 10 and 404 Permits, Municipalities of Guayanilla-Penuelas and Ponce, Puerto Rico, Contact: Edwin E. Muniz (787) 289–7034.

Revision of FR Notice Published on 9/20/2002: Officially Withdrawn by the Preparing Agency by letter Dated 12/5/2002.

Dated: September 23, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–24400 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–1003–0112; FRL–7328–3]

The Association of American Pesticide Control Officials, State FIFRA Issues Research and Evaluation Group, Working Committee on Water Quality and Pesticide Disposal, and Pesticide Operations and Management Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Water Quality and Pesticide Disposal (WC/WQ and PD) and Pesticide Operations & Management Working Committee (POM) will hold a 2–day meeting, beginning on October 27, 2003, and ending October 28, 2003. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, October 27, 2003, from 8:30 a.m. until 5 p.m. and October 28, 2003, from 8:30 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at Days Inn Crystal City, 2000 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov.* or

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0112. 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 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. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. WQ/PD issue team report.
2. National pesticide stewardship alliance conference report/label review manual and label language recommendations/discussions.
3. Clean air act presentation/recommendations and restrictions for burning.
4. CCA update(s) and risk assessment results/registration of alternatives active ingredient uses/disposal issues for old/new products.
6. Lab director's issue paper.
7. Method development and methods availability as registration criteria.
8. Office of General Council presentation re: CBI criteria and definitions.
9. Registration/cancellation policy and decisions (front end/back end issues).
10. Registration authority review/matrix - joint team creation.
11. Who, what, and why of the Pesticide Program Dialogue Committee and the mosquito labeling experience.
12. How to expand upon and utilize the Pesticide Program Dialogue Committee or other groups (the marketing and expansion/extension of SFIREG).
3. Atrazine eco-monitoring and mitigation issues/reregistration eligibility decisions, use of label language and best management practices to implement reregistration eligibility decision.
14. AAPCO annual meeting/SFIREG Report.
15. EPA briefing/state issues discussion. Endangered species status. Status and Results of Clean Water Act/FIFRA Guidance Policy. OW and OPP Working Group Activities/Progress.

11. EPA update/briefing:

a. Office of Pesticide Programs update.

b. Office of Enforcement Compliance Assurance update.

List of Subjects

Environmental protection, Pesticide and Pests.

Dated: September 15, 2003.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–24369 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0316; FRL–7327–8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review probabilistic exposure and risk assessment for children who contact chromated copper arsenate (CCA)-treated wood on playsets and decks and CCA-containing soil around these structures.

DATES: The meeting will be held from December 3–5, 2003, from 8:30 a.m. to 5 p.m, eastern standard time.

Comments. Deadlines for submission of requests to present oral comments and submission of written comments, see Unit I.F. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Requests for nominations to serve as an ad hoc member of the FIFRA SAP for the meetings should be provided on or before October 10, 2003.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments. Written 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.**

Nominations, Requests to present oral comments, and Special seating. To submit nominations to serve as an ad hoc member of the FIFRA SAP for the meetings, or requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2003–0316 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8450; e-mail addresses:*lewis.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0316. 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 meeting agenda relevant to this meeting is now available. EPA's position paper, charge/questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and ad-hoc members for this meeting) will be available as soon as possible, but no later than late October 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public

docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comment on the topic of this meeting. You may submit comments electronically, by mail, or through hand delivery/courier. EPA would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, EPA cannot assure your request would arrive in a timely manner. 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–2002–0316. 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–2003–0316. 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–2003–0316.

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–2003–0316. 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 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 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. For submission of CBI, see Unit I.D. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0316 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although, requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, November 25, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although, submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern standard time, November 25, 2003, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas: Children's exposure and activities; bioavailability; dermal absorption; probabilistic exposure and probabilistic risk assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by October 10, 2003.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflict of interests before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a Special Government Employee. The Agency will review all nominations; a decision on FIFRA SAP members for the meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

The FIFRA SAP will meet to consider and review the Agency's exposure and risk assessment for children exposed to CCA-treated wood on public playsets and residential decks and playsets and CCA-containing soil around these structures. The EPA exposure and risk assessment takes into consideration recent reviews by the Panel analyzing (1) the Agency's preliminary evaluation of the non-dietary hazard and exposure

to children from contact with CCA-treated wood playground structures (October 2001 FIFRA SAP meeting); and (2) a scenario specific model (SHEDS-Wood) to estimate children's exposure and dose to wood preservatives from treated playsets and residential decks (August 2002 FIFRA SAP meeting). This SAP review is part of the Agency's ongoing reregistration process for CCA-treated wood.

The Agency requests that the Panel review:

1. The revised methodology for conducting the probabilistic exposure assessment using EPA's SHEDS-Wood model, including whether FIFRA SAP comments on the SHEDS-Wood model and inputs (August 2002 FIFRA SAP meeting) have been appropriately addressed in the CCA risk assessment.

2. SHEDS-Wood model predictions for arsenic and chromium exposure and dose for the population of interest, including both variability and uncertainty.

3. Strengths and limitations of exposure, dose and risk assessment aproaches and results that rely upon probabilistic exposure and dose estimation methodologies.

To assist the FIFRA SAP in their review, each FIFRA SAP member will be provided CD(s) containing a technical report describing the SHEDS-Wood probabilistic CCA exposure assessment, annotated SHEDS-Wood code, and a technical report presenting the probabilistic CCA risk assessment. These material will also be available to the public via the docket as described under **SUPPLEMENTARY INFORMATION.**

FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes serve as the panel's report and is the formal summary of its findings. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 17, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–24402 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7563–9]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in her capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-governmental organizations, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from State, local and tribal governments.

The Committees are meeting to review and comment on the Proposed Commission for Environmental Cooperation (CEC) Program Plan and Budget for 2004–2006.

DATES: The Committees will meet on Thursday, October 9, 2003, from 9 a.m. to 6 p.m., and on Friday, October 10, 2003, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Carrillo Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 233–0072.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Oscar Carrillo at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 15, 2003.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 03–24409 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0333; FRL–7324–2]

Fenthion; Product Registrations Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing a cancellation order for the cancellations, as requested by Bayer Environmental Science, of all of Bayer's registrations for products containing O,O-dimethyl O-(4-(methylthio)-m-tolyl)phosphorothioate (fenthion) and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a May 30, 2003 notice of receipt of requests from Bayer for cancellations of all of Bayer's fenthion product registrations. In the May 30, 2003 notice, EPA indicated that it would issue an order granting the voluntary product registration cancellations, unless the Agency received any substantive comments within the comment period that would merit its further review of these requests. After reviewing the comments received, EPA decided to approve the voluntary cancellation request. Accordingly, EPA hereby issues this notice of a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: This cancellation order will be effective June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Jennings, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (706) 355–8574; e-mail address: *jennings.susan@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–2003–0122. 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. EPA also established two dockets containing documents in support of the fenthion IRED. They are dockets OPP–34145 and OPP–34145A. 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.

II. What Action is the Agency Taking?

This notice announces cancellation, as requested by the pesticide registrant, Bayer, of its fenthion products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit. Additionally, there are four FIFRA section 24(c) registrations, which the Agency intends to address in a separate action.

Fenthion is an organophosphorous insecticide used to control adult mosquitos in two counties in Florida. In a letter dated March 31, 2003, Bayer Environmental Science requested a voluntary cancellation of all its registrations for products containing fenthion, to be effective June 30, 2004. Bayer stated that this decision was based on the fact that the market for this product is very limited, in addition to the expected costs for generating data to meet the requirements mandated by the FIFRA reregistration process.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration number	Product name	Chemical name
432–1285	Baytex Liquid Concentrate Insecticide	Fenthion
432–1290	Baytex Technical Insectide	Fenthion

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company nunber	Company name and address
432	Bayer Environmental Science, 95 Chestnut Ridge Road, Montvale, NJ 07645

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of fenthion product registrations identified in Table 1 of this notice. Accordingly, the Agency orders that the fenthion product registrations identified in Table 1 are hereby canceled as of June 30, 2004. After June 30, 2004, it will be unlawful for any person to distribute or sell any fenthion product, except as provided in Unit VI. Use of any fenthion products before November 30, 2004, including canceled products, must be in accordance with label directions and restrictions. Use of any fenthion products after November 30, 2004, is unlawful.

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

V. What Comments did the Agency Receive?

EPA received three sets of comments on the voluntary cancellation request for fenthion products during the comment period. The commenters, American Bird Conservancy, Defenders of Wildlife, and Florida Wildlife Federation, as well as two private citizens, all supported the granting of the volunatary cancellation request.

EPA also received one comment from the Lee County Mosquito Control District (LCMCD) after the close of the comment period. Although EPA is not obligated to consider untimely comments, the Agency did review the comment. EPA does not believe the issues raised by LCMCD merit further review or a denial of the voluntary cancellation request. EPA's detailed response to the LCMCD comment may be found in the docket listed in Unit I.B.1.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Sale and distribution of fenthion products will not be permitted after June 30, 2004, except for the return to Bayer of unused product or for proper disposal until December 31, 2004. Use of any fenthion products will not be lawful under FIFRA after November 30, 2004. Use of fenthion products, including canceled products prior to November 30, 2004, must be in

accordance with the label directions and restrictions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 15, 2003.

Betty Shackleford,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–24535 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7564–1]

IRIS Needs Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report titled, *Needs Assessment for U.S. EPA's Integrated Risk Information System* (EPA/635/R–02/004), prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development, National Center for Environmental Assessment (NCEA). The purpose of this report is to characterize the needs of users for new or updated health effect assessments provided on the Integrated Risk Information System (IRIS) data base.

ADDRESSES: The document is available electronically on the IRIS Web site at *www.epa.gov/iris,* under the *What's New* menu. A limited number of paper copies are available through the IRIS Hotline, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770; Telephone: 301–345–2870, E-mail: *hotline.iris@epa.gov.* Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: For further information on the IRIS Needs Assessment, please contact the IRIS Hotline, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770; telephone: 301–345–2870, E-mail: *hotline.iris@epa.gov,* or Susan Rieth, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; Telephone: 202–564–1532, Facsimile: 202–565–0075; E-mail: *rieth.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA's IRIS is a data base containing Agency consensus scientific positions on potential adverse health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. The IRIS data base contains qualitative and quantitative health effects information for more than 500 chemical substances in support of the first two steps of the risk assessments process, *i.e.*, hazard identification and dose-response evaluation. The information in IRIS is used in combination with site- or situation-specific exposure information to develop estimates of potential public health risk.

In October 2000, the U.S. Senate Appropriations Committee requested that EPA conduct a needs assessment, with public input, to determine whether the current annual rate of updating the existing IRIS files should be increased and to assess the extent of need for information on chemicals not now included. EPA's needs assessment report responds to the Senate's request by summarizing the needs expressed by EPA and the public for new and updated IRIS files, and discussing general approaches to meeting those needs.

Dated: September 17, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–24408 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7563–7]

Proposed Issuance of General NPDES Permits for Small Publically Owned Treatment Works (POTWs) and Other Small Treatment Works Treating Domestic Sewage in Alaska (NPDES Permits Nos. AKG–57–0000, and AKG–57–1000)

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of proposed issuance of two general NPDES permits.

SUMMARY: The Director, Office of Water, EPA Region 10, proposes to issue general National Pollutant Discharge Elimination System (NPDES) permits for small POTWs and other small treatment works treating domestic sewage in Alaska pursuant to the provisions of the Clean Water Act (CWA) 33 U.S.C. 1251 *et seq.* One general permit is applicable to those facilities discharging to marine waters (NPDES Permit Number AKG–57–1000) while the second general permit is applicable to facilities discharging to fresh waters (Number AKG–57–0000).

When issued, the proposed general permits will establish effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines (40 CFR part 133 Secondary Treatment Regulations), and the State of Alaska's Water Quality Standards (18 AAC 70). The general permits contain conditions applicable to three categories of treatment: Treatment works where a mechanically aerated waste stabilization pond (aerated lagoon) is used as the principal process; treatment works where a passive waste stabilization pond (non-aerated lagoon) is used as the principal process; and other treatment works treating domestic sewage. The fact sheet describes the basis for the conditions and requirements of the proposed general permits.

The proposed permits will authorize discharge to waters of the United States in and contiguous to the State of Alaska. Sewage treatment plants meeting any of the following conditions will be excluded from coverage under the general permits: The design flow or actual discharge flow exceeds 1.0 million gallons per day; a total maximum daily load (TMDL) analysis is approved for the receiving water and includes waste load allocations for the facility; the receiving water is listed as impaired (*i.e.* 303(d) listed) for failure to meet a water quality standard and the facility discharges a pollutant that contributes to the impairment; and/or the facility receives a significant contribution from a non-domestic industrial user(s). Dischargers meeting any of the above criteria are required to apply for and obtain an individual NPDES permit.

DATES: Interested persons may submit comments on the proposed issuance of the general permits to EPA, Region 10 at the addresses below. Comments must be postmarked by November 10, 2003.

ADDRESSES: Comments on the proposed issuance of the general permits should be sent to the attention of the Director, Office of Water, 1200 Sixth Avenue OW–130, Seattle, Washington 98101. Comments may also be submitted electronically to *lidgard.michael@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the proposed general permits and fact sheet are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Mike Lidgard at (206) 553–1755. Requests may also be electronically

mailed to: *washington.audrey@epa.gov* or *lidgard.michael@epa.gov.*

The proposed general permits and fact sheet may also be found on the EPA Region 10 Web site at *http://www.epa.gov/r10earth/water.htm,* click on Water Quality, then NPDES permits under Programs and draft permits under EPA Region 10 Information.

SUPPLEMENTARY INFORMATION:

Executive Order 12866: The Office of Management and Budget exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Regulatory Flexibility Act (RFA): Under the RFA, 5 U.S.C. 601 *et seq.*, a federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of (the Administrative Procedure Act (APA)), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

Dated: September 10, 2003.

Robert R. Robichaud,

Acting Associate Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 03–24407 Filed 9–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 17, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 25, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0951.

Title: Service of Petitions for Preemption, 47 CFR 1.1204(b) Note, and 1.1206(a) Note 1.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business and other for-profit, individual or household, not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents: 125.

Estimated Time Per Response: .25 hours (15 minutes).

Frequency of Response: On occasion reporting, and third party disclosure requirements.

Total Annual Burden: 30 hours.

Total Annual Cost: $0.

Needs and Uses: These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which are cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local government whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24329 Filed 9–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

September 17, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at

Kim_A._Johnson@omb.eop.gov, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by September 17, 2003.

OMB Control Number: 3060–1033.

Type of Review: Extension of a currently approved collection.

Title: Multi-Channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

Form Number: FCC 396–C.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,200.

Estimated Time per Response: 10 mins. to 2.5 hrs.

Frequency of Response: Recordkeeping; Annual and five-year reporting requirements.

Total Annual Burden: 3,188 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in the broadcast and multi-channel video program distribution (MVPD) industries through outreach to the community in recruitment and prevention of employment discrimination. In addition, the Second R&O combined previous FCC Forms 395–A and 395–M, which requested substantially the same information. The FCC adopted new Form 396–C, which is substantially the same as those portions of FCC 395–A and 395–M that sought data about the MVPD's compliance with EEO program requirements, but it omits those portions of the prior forms that sought workforce data. All MVPDs with six or more full-time employees must file an EEO report annually in the public file detailing their outreach efforts and the results for the prior year, as part of the in-depth MVPD investigation conducted once every five years. Emergency approval is needed for this form because it is due to be filed by September 30, 2003, and the FCC needs OMB approval before that date to allow time for the Commission to post a public notice announcing OMB approval and to give filers time to file, as well as to enable the **Federal Register** time to publish this notice by September 23, 2003.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24330 Filed 9–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

September 16, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by September 16, 2003.

OMB Control Number: 3060–0027.

Type of Review: Revision of a currently approved collection.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC 301.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,370.

Estimated Time Per Response: 37 to 121 hours.

Frequency of Response: On occasion requirements; Third party disclosure.

Total Annual Burden: 7,427 hours.

Total Annual Cost: $35,485,300.

Needs and Uses: On September 3, 2003, the United States Court of Appeals for the Third Circuit issued an Order staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003. (*Report and Order,* MB Docket 02–277 and MM Dockets 01–235, 01–317, and 00–244, and *Notice of Proposed Rulemaking, In The Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.*) 68 FR 46285, August 5, 2003. The Court ordered ''that the prior ownership rules remain in effect pending resolution of these proceedings.'' *Prometheus Radio Project* v. *FCC,* No. 03–3388 (3d Cir. Sept. 3, 2003) (per curiam). The Court's *Order* requires that the Commission process broadcast station applications under the prior ownership rules. Because FCC Form 301(June 2002) was supposed to have expired in August 2003 but was superceded by the July 2003 version, we are now requesting immediate reactivation of the previously approved version of this form.

FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, or to make changes in existing facilities of such a station. In addition, FM licensees or permittees may request, by application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class and downgrades to

adjacent channels without first submitting a petition for rulemaking. All applicants using this one-step process must demonstrate that a suitable site exists which would comply with allotment standards with respect to minimum distance separation and city-grade coverage and which would be suitable for tower construction. To receive authorization for commencement of Digital Television (''DTV'') operation, commercial broadcast licensees must file FCC Form 301 for a construction permit. This application may be filed anytime after receiving the initial DTV allotment but must be filed before mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applications will not have to supply full legal or financial qualification information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24331 Filed 9–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 15, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0922.

Type of Review: Extension of a currently approved collection.

Title: Broadcast Mid-Term Report, FCC Form 397.

Form Number: FCC 397.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 4,300.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; Mid-point reporting requirement.

Total Annual Burden: 269 hours (one-eighth of respondents file annually).

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, 68 FR 670 (2003), which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules adopt a new version of FCC Form 397. The new EEO rules also ensure equal employment opportunity in the broadcast and multi-channel video program distribution industries through outreach to the community in recruitment and prevention of employment discrimination. The new version of FCC Form 397 is filed only once at the mid-point of the eight-year license term of television licensees, with five or more full-time employees, and radio licensees, with eleven or more full-time employees. Licensees must certify that they have complied with the FCC's EEO rules during the period prior to the date of the Mid-Term Report and must include copies of EEO reports that are required to be placed in the licensees' local public file for the prior two years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24332 Filed 9–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–138; FCC 03–228]

Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization To Provide In-Region, InterLATA Service in Michigan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (Michigan Bell) for authority to enter the interLATA telecommunications market in Michigan. The Commission grants Michigan Bell's application based on the Commission's conclusion that Michigan Bell has satisfied all of the statutory requirements for entry and opened its local exchange markets to full competition.

DATES: Effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Gina Spade, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–7105 or via the Internet at *gina.spade@fcc.gov.* The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–138, FCC 03–228, adopted September 17, 2003, and released September 17, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals

II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications.*

Synopsis of the Order

1. *History of the Application.* On June 19, 2003, Michigan Bell filed an application with the Commission, pursuant to section 271 of the Telecommunications Act of 1996, to provide in-region, interLATA service in the state of Michigan.

2. *The State Commission's Evaluation.* The Michigan Public Utilities Commission (Michigan Commission), following an extensive review process, advised the Commission that Michigan Bell has taken the statutorily required steps to open its local markets to competition. Consequently, the Michigan Commission recommended that the Commission approve Michigan Bell's in-region, interLATA entry in its evaluation and comments in this proceeding.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation on July 16, 2003, expressing concerns about Michigan Bell's wholesale billing, line splitting, and data reliability. The Department of Justice ultimately stated that because of serious concerns about wholesale billing, it could not support the application based on the current record, but noted that the Commission might be able to resolve these billing issues prior to conclusion of its review.

4. *Compliance with Section 271(c)(1)(A).* In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B). The Commission concludes that Michigan Bell satisfies the requirements of Track A in Michigan. This decision is based on the interconnection agreements Michigan Bell has implemented with competing carriers in Michigan and the number of carriers that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers.

Primary Issues in Dispute

5. *Evidentiary Case—Data Reliability.* The Commission finds that Michigan Bell's data are, on the whole, reliable and accurate, based on the evidence in the record, including two independent, third-party audits of Michigan Bell's performance data. The Commission finds, therefore, that the commercial performance data submitted by Michigan Bell form an adequate evidentiary basis on which the Commission can render judgments regarding Michigan Bell's satisfaction of the competitive checklist.

6. *Checklist Item 2—Unbundling Network Elements.* Based on the record, the Commission finds that Michigan Bell provides ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2. The Commission also concludes that Michigan Bell provides nondiscriminatory access to combinations of unbundled network elements (UNE combinations) in compliance with the Commission's rules. Based on the evidence in the record, the Commission also finds that Michigan Bell's charges for UNEs made available to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2. The Commission finds that the Michigan Commission followed basic TELRIC principles and that the Michigan Commission worked diligently to set UNE rates at TELRIC levels.

7. *Access to Operations Support Systems.* Based on the evidence in the record, the Commission finds that Michigan Bell is providing competitors nondiscriminatory access to OSS in compliance with checklist item 2. Pursuant to its analysis, the Commission finds that Michigan Bell provides non-discriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Michigan Bell regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management), Michigan Bell provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Michigan Bell does or, if no appropriate retail analogue exists within Michigan Bell's systems, in a manner that permits competitors a meaningful opportunity to compete. In particular, the Commission, assessing the totality of the circumstances, finds that Michigan Bell's evidence regarding billing demonstrates that competitive LEC concerns reflect only isolated instances or errors typical of high-volume carrier-to-carrier commercial billing, rather than systemic problems. The Commission thus finds that the allegations raised about billing in this record do not warrant a finding of checklist noncompliance because Michigan Bell's billing processes provide competitors a meaningful opportunity to compete. In addition, regarding specific areas for which the Commission identifies issues with Michigan Bell's OSS performance—line loss notification reports and billing completion notices—the Commission finds that these problems do not demonstrate overall discriminatory treatment or are not sufficient to warrant a finding of checklist noncompliance.

8. *Checklist Item 4—Unbundled Local Loops.* Based on the evidence in the record, the Commission concludes that Michigan Bell provides unbundled local loops in accordance with the requirements of section 271 and Commission rules. The Commission's conclusion is based on its review of Michigan Bell's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high-capacity loops, as well as the Commission's review of Michigan Bell's processes for hot cut provisioning, line sharing and line splitting. With respect to issues related to Michigan Bell's line splitting processes, the Commission finds that a BOC is not required to have in place processes for all possible line splitting scenarios at the time of its application if the BOC is working with competing LECs in a state collaborative to develop appropriate procedures. Because Michigan Bell is working with competitive LECs to develop such processes in Michigan, the Commission finds that these issues do not warrant a finding of checklist noncompliance.

9. *Checklist Item 7—Access to 911/E911 and Operator Services/Directory Assistance.* Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide ''[n]ondiscriminatory access to 911 and E911 services.'' A BOC must provide competitors with access to its 911 and E911 services in the same manner that it provides such access to itself, *i.e.*, at parity. Specifically, the BOC ''must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.'' The Commission finds that Michigan Bell provides nondiscriminatory access to 911 and E911 services. Section 271(c)(2)(B)(vii) also requires a BOC to provide nondiscriminatory access to

''directory assistance services to allow the other carrier's customers to obtain telephone numbers'' and ''operator call completion services,'' respectively. Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC ''the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to * * * operator services, directory assistance, and directory listing, with no unreasonable dialing delays.'' Based on the Commission's review of the record it concludes that Michigan Bell offers nondiscriminatory access to its directory assistance services and operator services (OS/DA).

Other Checklist Items

10. *Checklist Item 1—Interconnection.* Based on its review of the record, the Commission concludes that Michigan Bell provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and prior Commission orders. In reaching this conclusion, the Commission examined Michigan Bell's performance with respect to collocation and interconnection trunks, as the Commission has done in prior section 271 proceedings.

11. *Checklist Item 10—Databases and Signaling.* Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Based on the evidence in the record, the Commission finds that Michigan Bell provides nondiscriminatory access to databases and signaling networks in the state of Michigan.

12. *Checklist Item 13—Reciprocal Compensation.* Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into ''[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).'' In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable. The Commission finds that commenters' allegations regarding Michigan Bell's reciprocal compensation policies and rate structure in Michigan do not cause Michigan Bell to fail this checklist item or the public interest standard. In addition, the Commission waives its complete-as-filed requirement on its own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider Michigan Bell's revised reciprocal compensation rates. The Commission's ''complete-as-filed'' requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. In its application filed on June 19, 2003, Michigan Bell explained that it had elected to invoke the rate structure set out in the Commission's *ISP Remand Order,* and the rate structure change would be effective in Michigan on July 6, 2003–after comments were filed on Michigan Bell's application. The Commission finds that a waiver is appropriate because Michigan Bell changed its rate structure for reciprocal compensation for ISP–bound traffic to the rate caps set forth in the Commission's *ISP Remand Order,* not as part of a strategy to win approval of its application.

13. *Remaining Checklist Items (3, 5, 6, 8, 9, 11, 12 and 14).* Based on the evidence in the record, the Commission concludes that Michigan Bell demonstrates that it is in compliance with checklist item 3 (access to poles, ducts, and conduits), item 5 (unbundled transport), item 6 (unbundled switching), item 8 (white pages), item 9 (numbering administration), item 11 (number portability), item 12 (dialing parity), and item 14 (resale).

14. *Section 272 Compliance.* Based on the record, the Commission concludes that Michigan Bell has demonstrated that it will comply with the requirements of section 272. Significantly, Michigan Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Michigan as it does in Texas, Kansas, Oklahoma, Missouri, Arkansas, and California—states for which SBC has already received section 271 authority.

15. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Michigan today are open to competition. The Commission further finds that the record confirms its view, as set forth in prior section 271 orders, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

16. *Section 271(d)(6) Enforcement Authority.* Working with the Michigan Commission, the Commission intends to closely monitor Michigan Bell's post-approval compliance to ensure that it continues to meet the conditions required for section 271 approval. The Commission stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Michigan.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24446 Filed 9–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2182–FN]

Medicare and Medicaid Programs; Reapproval of the Community Health Accreditation Program (CHAP) for Deeming Authority for Hospices

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces the reapproval of the Community Health Accreditation Program (CHAP) as a national accreditation program for hospices that request participation in the Medicare or Medicaid programs.

EFFECTIVE DATE: This final notice is effective November 21, 2003 through November 21, 2009.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice, provided certain requirements are met. Section 1861(dd) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice provider. The regulations at 42 CFR part 418 specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care. Regulations concerning provider agreements are located in 42 CFR part 489, and regulations pertaining to activities relating to the survey and certification of facilities are located in 42 CFR part 488. Section 1905(o)(i)(A) of the Act generally extends the hospice Medicare requirements to payments for

hospice services under the Medicare program.

Generally, in order to enter into an agreement, a hospice facility must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418 of our regulations. Then, the hospice facility is subject to regular surveys by a State survey agency to determine whether it continues to meet those requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we would ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to apply for continued approval of deeming authority every 6 years or sooner as determined by us. The Community Health Accreditation Program's (CHAP's) term of approval as a recognized accreditation program for hospice facilities expires November 20, 2003.

II. Approval Process for Deeming Applications

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** of our approval or denial of the application.

III. Provisions of the Proposed Notice

On April 25, 2003, we published a proposed notice in the **Federal Register** (68 FR 20391) announcing the CHAP's request for reapproval as a deeming organization for hospice facilities. In this notice, we specified in detail our evaluation criteria. Under section 1865(b)(2) of the Act and our regulations at § 488.4, we conducted a review of the CHAP application in accordance with the criteria specified in our regulation, which include, but are not limited to the following:

- An onsite administrative review of CHAP's:

(1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.

- A comparison of CHAP's hospice accreditation standards to our current Medicare hospice conditions of participation.
- A documentation review of CHAP s survey processes to:
- Determine the composition of the survey team, surveyor qualifications, and the ability of CHAP to provide continuing surveyor training.
- Compare CHAP s processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- Evaluate CHAP's procedures for monitoring providers or suppliers found to be out of compliance with CHAP program requirements. The monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
- Assess CHAP's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- Establish CHAP's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of CHAP's survey process.
- Determine the adequacy of staff and other resources.
- Review CHAP's ability to provide adequate funding for performing required surveys.
- Confirm CHAP's policies concerning whether surveys are announced or unannounced.
- Obtain CHAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether CHAP's requirements met or exceeded the Medicare conditions of participation for hospice facilities. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between CHAP and Medicare's Conditions and Survey Requirements

We compared the standards contained in CHAP's ''Standard of Excellence for Hospice'' and ''The Core Standards of Excellence'' and its survey process in the ''Reapplication for Deeming Authority For Hospice Programs'' with the Medicare hospice conditions for participation and our State and Regional Operations Manual. Our review and evaluation of CHAP's deeming application, which were conducted as described in section III of this notice yielded the following:

- CHAP agreed to add the language ''for pain control and respite purposes'' to its standard that deals with inpatient care. CHAP s standard now states: ''The general inpatient level of care is arranged when the patient requires palliation treatment for acute medical and/or psychological symptoms and/or for pain control that cannot be managed in the patient's home. Inpatient care is also available for respite purposes,'' which meets the requirements of § 418.98.
- In order to meet the requirements of the conditions of participation at § 418.94, CHAP agreed to change the term ''Home Care Aide'' to ''Home Health Aide.''
- In order to meet the requirements of § 418.204, CHAP agreed to remove the terms ''social worker'' and ''personal care'' and add the word ''homemaker'' to its standards that dealt with special coverage requirements.
- In order to meet the regulations at § 418.84, CHAP replaced the term ''professional social worker'' with ''qualified social worker.''
- In order to comply with § 418.58(b) and to clarify who is responsible for

reviewing the plan, CHAP added to its standard the wording, ''by the attending physician, the medical director or physician designee and the IDT/IDG.''

• In order to meet the requirements of § 418.22(d)(2), CHAP added certification and recertification of the terminal illness with a six-month prognosis, signed by a physician, as necessary elements that needed to be maintained in the medical record.

• The word ''paraprofessional'' was removed and replaced with the term ''Home Health Aide'' in the CHAP standard.

• CHAP agreed to change homemaker supervision from every 6 months to 1 month.

• To meet the requirements of the 2000 edition of the Life Safety Code and to comply with § 418.100, CHAP has agreed to add an additional standard that states that roller latches are not used on corridor doors.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that CHAP's requirements for hospices meet or exceed our requirements. Therefore, we recognize CHAP as a national accreditation organization for hospices that request participation in the Medicare program, effective November 21, 2003 through November 21, 2009.

IV. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, ''Survey, Certification, and Enforcement Procedures,'' are currently approved by OMB under OMB approval number 0938–0690.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final notice recognizes CHAP as a national accreditation organization for hospices that request participation in the Medicare and Medicaid programs. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

In an effort to better ensure the health, safety, and services of beneficiaries in hospices already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem hospices accredited by CHAP as meeting our Medicare requirements. Thus, we continue our focus on ensuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: August 7, 2003.

Thomas Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–24547 Filed 9–25–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9018–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April 2003 Through June 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April 2003 through June 2003, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations affecting specific medical and health care

services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare. Finally, this notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (*See* Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Karen Bowman, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–5252.

Questions concerning national coverage determinations in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning Investigational Device Exemptions items in Addendum VI may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–4633.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Dawn Willinghan, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6141.

Questions concerning all other information may be addressed to Margie Teeters, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–13–18, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–4678.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, national coverage determinations (NCDs), and Food and Drug Administration (FDA)-approved investigational device exemptions (IDEs) published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual (CIM) may wish to review the August 21, 1989 publication (54 FR 34555). Those interested in the procedures used in making NCDs under the Medicare program may review the April 27, 1999 publication (64 FR 22619).

To aid the reader, we have organized and divided this current listing into six addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the CIM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device

numbers are assigned (that is, Category A or Category B), and identified by the IDE number.

• Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp*.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to *swais.gpoaccess.gov*, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings*.

D. CMS's Compact Disk—Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

• Titles XI, XVIII, and XIX of the Act.
• CMS-related regulations.
• CMS manuals and monthly revisions.
• CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm*.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each CMS publication are shown in Addendum III, along with the CMS publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the transmittal number. For example, to find the Carriers Manual, Part 3—Program Administration (CMS Pub. 14–3) transmittal entitled ''Incident to Physician's Professional Services (Subsection A—Commonly Furnished in Physicians' Offices),'' use the Superintendent of Documents No. HE 22.8/7 and the transmittal number 1793.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: September 8, 2003.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

May 11, 1999 (64 FR 25351)
November 2, 1999 (64 FR 59185)
December 7, 1999 (64 FR 68357)
January 10, 2000 (65 FR 1400)
May 30, 2000 (65 FR 34481)
June 28, 2002 (67 FR 43762)
September 27, 2002 (67 FR 61130)
December 27, 2002 (67 FR 79109)
March 28, 2003 (68 FR 15196)
June 27, 2003 (68 FR 38359)

Addendum II.—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual (CIM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April 2003 Through June 2003]

Transmittal No.		Manual/Subject/Publication No.
		Intermediary Manual **Part 3—Audits, Reimbursement Program Administration** **(CMS Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1879	•	Clinical Diagnostic Laboratory Services Other Than To Inpatients Screening Pap Smears and Pelvic Examinations
1880	•	Autologous Stem Cell Transplantation
1881	•	Review of Form HCFA–1450 for Inpatient and Outpatient Bills
1882	•	Frequency of Billing
1883	•	Magnetic Resonance Angiography
1884	•	Telehealth Services
1885	•	Medicare Payment for Telehealth Services
1886	•	Payment Without Common Working File Approval
1887	•	Filing a Request for Payment
		Request for Payment
		Filing Claims for Payment
		Time Limits for Requests and Claims for Payment for Services Reimbursed
		Effects on Beneficiary and Provider of Beneficiary's Refusal to File a Request for Payment
		Filing Claims Where Usual Time Limit Has Expired
		Claims for Payment for Emergency Hospital Services and Services Outside the United States
		Appeals
		Time Limits for Filing Part B Reasonable Charge Claims
		Claims Processing Timeliness
		Time Limitations for Filing Provider Claims
		Incomplete or Invalid Claims
		Addendum L Paper and Electronic Data Element Requirements
		Bill Type Codes and Allowable Provider Numbers
1888	•	Screening Pap Smears and Screening Pelvic Examinations
1889	•	Billing of the Diagnosis and Treatment of Peripheral Neuropathy With Loss of Protective Sensation in People With Diabetes
1890	•	Coverage and Billing of Sacral Nerve Stimulation
		Deep Brain Stimulation for Essential Tremor and Parkinson's Disease
1891	•	International Classification of Diseases 9th Edition
		Clinical Modification Coding for Diagnostic Tests
		Carriers Manual **Part 3—Program Administration** **(CMS Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1793	•	Incident to Physician's Professional Services (Subsection A—Commonly Furnished in Physicians' Offices)
1794	•	The ''Do Not Forward'' Initiative (Subsection C—Internal Revenue Services—1099 Reporting)
1795	•	Magnetic Resonance Angiography Coverage Summary Coding Requirements
1796	•	Skilled Nursing Facility Consolidated Billing
		Determining the End of a Skilled Nursing Facility Stay
		Types of Facilities Included in and Excluded From Consolidated Billing
		Types of Services Included in and Excluded From Consolidated Billing
		Risk-Based Health Maintenance Organization Beneficiaries
		Clarification of Ambulance Services
		Information on a Skilled Nursing Facility Contracting With Outside Entities for Services
		Carrier Claims Processing
		Special Requirements for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies
		Revisions to Common Working File Edits To Permit Payment for Certain Diagnostic Services Furnished To Beneficiaries Receiving Treatment for End-Stage Renal Disease at an Independent or Provider-Based Dialysis Facility
1797	•	Telehealth Claims
1798	•	Medicare Payment for Telehealth Services
1799	•	Payment Limit for Certain Drugs and Biologicals
		Procedures for Determining Payment Limit
		Injection Services
		Mandatory Assignment for Drugs and Biologicals
1800	•	Drugs and Biologicals
		Definition of Drug or Biological
		Determining Self-Administration of Drugs or Biologicals Incident-To Requirements
1801	•	Healthcare Common Procedure Coding System Coding
		Common Working File Edits for Flu and Pneumonia Claims
		Administrative Bulletin Crossover Edit
		Payment Requirements
		No Legal Obligation To Pay
		Roster Billing
		Health Maintenance Organization Processing

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.		Manual/Subject/Publication No.
		Specialty Code/Place of Service Processing
1802	•	Foot Care and Supportive Devices for Feet Foot Care
		Peripheral Neuropathy With Loss of Protective Sensation in People With Diabetes
		Coverage
		Applicable Codes
		Payment Requirements
		Standard System Edits
		Common Working File Edits
1803	•	End-Stage Renal Disease Bill Procedures 1804
1804	•	Durable Medical Equipment Regional Carriers—Pre-Discharge Delivery of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies for Fitting and Training
1805	•	Necessity for Treatment
1806	•	Intestinal and Multi-Visceral Transplantation
		Approved Transplant Facilities
		Payment Procedures for Intestinal and Multi-Visceral Transplants
1807	•	International Classification of Diseases 9th Edition Clinical Modification
		Coding for Diagnostic Tests
		Program Memorandum Intermediaries (CMS Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–03–020	•	April 2003 Update of the Hospital Outpatient Prospective Payment System
A–03–021	•	Announcement of Medicare Rural Health Clinics and Federally Qualified
		Health Centers Payment Rate Increases, Clarification on Coverage and Payment of Diabetes Self-Management Training Services and Medical Nutrition Therapy Services
A–03–022	•	Installation of Version 29.0 of the Provider Statistical and Reimbursement Reporting System—Modification A–03–023
A–03–023	•	Implementation of the Temporary Equalization of Urban and Rural Standardized Payment Amounts Under the Medicare Inpatient Hospital Prospective Payment System as Required By Section 402(b) of Public Law 108–7
A–03–024	•	Advance Beneficiary Notices Must Be Given To Beneficiaries and Demands Bills Must Be Submitted By Home Health Agencies
A–03–025	•	Advance Beneficiary Notices Must Be Given To Beneficiaries and Demands Bills Must Be Submitted By Home Health Agencies
A–03–026	•	April Outpatient Code Editor Specifications Version (V4.1)
A–03–027	•	Updated Outpatient Prospective Payment System: Requirements for Provider Education and Training
A–03–028	•	January Medicare Outpatient Code Editor Specifications Version 18.1R1 for Bills From Hospitals That Are Not Paid Under the Outpatient Prospective Payment System
A–03–029	•	Corrections to: Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education, etc., as Published in the **Federal Register**, Fiscal Year 2003 (67 FR 49982, August 1, 2002)
A–03–030	•	Provider-Based Status On or After October 1, 2002
A–03–031	•	Medicare Secondary Payer Information Collection Policies Changed for Hospitals
A–03–032	•	Addition of Patient Status Code 43, Deletion of Patient Status Codes 71 and 72, and Information on New Patient Status Code 65
A–03–033	•	End-Stage Renal Disease Reimbursement for Automated Multi-Channel Chemistry Tests
A–03–034	•	Modification to Medicare Timely Filing Edit for Claims Paid Under Certain Prospective Payment Systems
A–03–035	•	Reporting of Revenue Codes Under the Outpatient Prospective Payment System
A–03–036	•	Installation of Version 30.0 of the Provider Statistical and Reimbursement Reporting System—Modification
A–03–037	•	Contractor Reporting of Operational and Workload Data for Electronic Data Interchange and Manual Transactions
A–03–038	•	Program Integrity Management Reporting System for Part A Phase 2
A–03–039	•	Clarification to Corrections to Updated Instruction on Receipt and Processing of Non-Covered Changes on Other Than Part A Inpatient Claims (Transmittals A–02–071, A–02–117)—Change In Effective and Implementation Date Only
A–03–040	•	Clarification of Bill Types 22x and 23x Submitted by Skilled Nursing Facilities
A–03–041	•	Health Insurance Portability and Accountability Act Version 4010A1
		Institutional 837 Health Care Claim Additional Implementation Direction
A–03–042	•	Updated Revision to Change Request 2508, Suspension, Offset, and Recoupment of Medicare Payment to Providers and Suppliers of Services
A–03–043	•	Changes to Fiscal Year 2001 Nursing and Allied Health Education Payment Policies
A–03–044	•	Audit Guidance Pertaining To Write-Offs of Small Debit Balances in Patients' Accounts Receivable
A–03–045	•	Payment to Hospitals and Units Excluded From the Acute Inpatient Prospective Payment System for Direct Graduate Medical Education and Nursing and Allied Health Education for Medicare+Choice Enrollees
A–03–046	•	Demonstration—Settlement of Payment for Home Health Services to Beneficiaries Eligible for Both Medicare and Medicaid in Connecticut, and Massachusetts. Regional Home Health Intermediaries Only.
A–03–047	•	Medicare's Coordination of Benefits Contractor Shall Discontinue the Dissemination of the Right of Recovery Letter to Intermediaries
A–03–048	•	July Outpatient Code Editor Specifications Version (V4.2)
A–03–049	•	Fiscal Intermediaries Must Install and Use Super Op With the Fiscal Intermediary Standard System
A–03–050	•	July Medicare Outpatient Code Editor Specifications Version 18.2 for Bills From Hospitals That Are Not Paid Under the Outpatient Prospective Payment System
A–03–051	•	July 2003 Update of the Hospital Outpatient Prospective System
A–03–052	•	Revision to Billing for Swing-Bed Services Under the Skilled Nursing Facility Prospective Payment System

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.	Manual/Subject/Publication No.
A–03–053	• Nurse Practitioner Services Under Medicare Hospice
A–03–054	• Revision to Change Request 2573, Transmittal A–03–013, dated February 14, 2003: 3-Day Payment Window Refinements Under the Short-Term Hospital Inpatient Prospective Payment System
A–03–055	• Disclosure of Information Requirements Related to Hospice Claims
A–03–056	• Payment Update for Long-Term Care Hospital Prospective Payment System Rate Year 2004
	Program Memorandum Carriers (CMS Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–03–023	• Correct Payment of January and February 2003 Physician Services
B–03–024	• Follow-Up to Implementation of the National Council for Prescription Drug Programs Telecommunications Standard Version 5.1 and the Equivalents Batch Standard Version 1.1 for Retail Pharmacy Drug Transactions
B–03–025	• Durable Medical Equipment Regional Carriers—DeWall Posture Protector Orthotic Body Jacket (L0430)
B–03–026	• Standard System Acceptance of Primary Payer Information at the Line Level
B–03–027	• Implementation of Carriers Jurisdiction Manual Instructions Based on the Medicare Carriers Manual Part 3, Section 3101 for the Multi-Carrier System Standard System and Associated Medicare Carriers
B–03–028	• Durable Medical Equipment Regional Carriers—Internal Classification of Diseases—9—Classification of Diseases Coding
B–03–029	• Manager Care Reasonable Charge Data Disclosure Requirements for Ambulance Services
B–03–030	• Types of Services Corrections
B–03–031	• Multi-Carriers System Reporting of 2003 Participating Data to the Contractor Reporting of Operational and Workload Data System
B–03–032	• Continuation of April and July 2003 Change Requests (2423 and 2524): Create Import/Export Functionality Between the Unique Provider Identification Number System and the Provider Enrollment Chain Ownership System
B–03–033	• Continuation of April and July 2003 Change Requests (2425 and 2525): Create Import/Export Functionality Between the Medicare Claims System and the Provider Enrollment Chain Ownership System
B–03–034	• Continuation of April and July 2003 Change Requests (2426 and 2526): Process All Medicare Part B Provider Enrollments in the Provider Enrollment Chain Ownership System. Modify the Medicare Claims System To Incorporate All Claim Payment and Provider Correspondence Functionality That Is Included in the Provider Enrollment System But Will Not Be a Part of Provider Enrollment Chain Ownership System
B–03–035	• Continuation of April and July 2003 Change Requests (2427 and 2527): Process All Medicare Part B Provider Enrollments in the Provider Enrollment Chain Ownership System. Create Import/Export Functionality Between the Viable Information Processing Systems Medicare System and Provider Enrollment Chain Ownership System
B–03–036	• Expansion of Beneficiary History and Claims In Process Files in the Viable Information Processing System Phase 1—Beneficiary History File Expansion
B–03–037	• Excluding From Home Health Consolidated Billing Edits Claims for Therapy Services Rendered by Physicians
B–03–038	• Oral Anti-Cancer Drugs
B–03–039	• Common Working File Skilled Nursing Facility Consolidated Billing Bypass To Allow Separate Payment for Drugs
B–03–040	• Update of the Place of Services Code Set
B–03–041	• National Council for Prescription Drug Program Batch Transaction Standard 1.1 Billing Request Companion Document
B–03–042	• Bi-Annual Updates to the Health Care Provider Taxonomy Code
B–03–043	• Diabetes Outpatient Self-Management Training and the ''Incident To'' Provision
B–03–044	• Correction to Business Requirements 2
B–03–045	• International Classification of Diseases 9th Edition Clinical Modification Coding Requirements for Claims Submitted to Medicare Carriers
B–03–046	• Provider Education: Establishing New Requirements for ICD–9–CM Coding on Claims Submitted to Medicare Carriers—Increased Role for Physicians/Practitioners
B–03–047	• Changes To Correct Coding Edits, Version 9.3, Effective October 1, 2003
B–03–048	• Addition of Temporary Codes Q4052 and Q4053
B–03–049	• Additional Instructions To Assist in the Implementation of Program Memorandum B–02–075—Carrier Review of Payment Amounts for Portable X-Ray Transportation Services Health Care Procedure Coding System
	Program Memorandum Intermediaries/Carriers (CMS Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–03–041	• Common Working File Reject and Utilization Edits and Carriers Resolution for Consolidated Billing for Skilled Nursing Facility Residents
AB–03–042	• Coverage and Billing for Percutaneous Image-Guided Breast Biopsy
AB–03–043	• Addition of ''K'' Codes for Surgical Dressings
AB–03–044	• Addition of Temporary ''K'' Codes
AB–03–045	• Addition of Temporary ''K'' Codes
AB–03–046	• Expanding the Number of Source Identifiers for Common Working File Medicare Secondary Payor
AB–03–047	• Single Drug Pricer Clarifications
AB–03–048	• End-Stage Renal Disease Coordination Period
AB–03–049	• Clarification of Payment Responsibilities of Fee-for-Service Contractors as They Relate to Hospice Members Enrolled in Managed Care Organizations and Claims Processing Instructions for Processing Rejected Claims

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.	Manual/Subject/Publication No.
AB–03–050	• Data Center Testing and Production—Electronic Correspondence Referral System User Manual 5.1 and Quick Reference Guide Replacement
AB–03–051	• Notice of Interest Rate for Medicare Overpayments and Underpayments
AB–03–052	• Managing Medicare Appeals Workloads in Fiscal Year 2003
AB–03–053	• Availability of Online Screens for the Laboratory National Coverage Determinations
AB–03–054	• Diagnosis Code for Screening Pap Smear and Pelvic Examination Services
AB–03–055	• Shared System Maintainer Hours for Resolution of Problems Detected During Health Insurance Portability and Accountability Act Transaction Release Testing
AB–03–056	• New Waived Test—March 21, 2003
AB–03–057	• Implementation of the Financial Limitation for Outpatient Rehabilitation Services
AB–03–058	• Collection of Fee-for-Service Payments Made During Periods of Managed Care Enrollment
AB–03–059	• Shared Systems Changes for Name Change From Health Care Financing Administration to Centers for Medicare & Medicaid Services (Fiscal Intermediary Standard and VIPS Medicare System External Changes Only)
AB–03–060	• Flat File Changes in the Health Care Claim Professional (837 Professional) Version 4010A1, Health Care Claim Payment/Advice (835) Version 4010 and 4010A1 and 3051.4A, and Health Care Claim Status Inquiry and Response (276/277) Version 4010A1 Transactions
AB–03–061	• Program Memorandum on Written Statements of Intent To Claim Medicare Benefits
AB–03–062	• New Common Working File Edits and Standard System Responses on Skilled Nursing Facility Claims
AB–03–063	• New Common Working File Medicare Secondary Payer Edit to Reject Medicare Secondary Edit Records for Medicare Beneficiaries Who Are Only Entitled To Medicare Part B, and Are Covered by a Group Health Plan
AB–03–064	• System Networking Electronic Correspondence Referral System User Guide
AB–03–065	• Schedule Release for July Updates to Software Programs and Pricing/Coding Files
AB–03–066	• Issuance of the Eligibility File-Based Standard Trading Partner Agreement for the Purpose of Coordination of Benefits
AB–03–067	• Revision to Change Request 2170: Appeals Quality Improvement and Data Analysis Activities
AB–03–068	• Common Working File Change for the 270/271 Eligibility Transaction
AB–03–069	• Clarification of the Criteria for a Valid Written Statement of Intent To File a Medicare Claim
AB–03–070	• Second Update to the 2003 Medicare Physician Fee Schedule Database
AB–03–071	• July Quarterly Update for 2003 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule
AB–03–072	• Mammography Computer-Aided Detection Equipment
AB–03–073	• Provider Education Article: Financial Limitation of Claims for Outpatient Rehabilitation Services
AB–03–074	• Instructions for Fiscal Intermediary Standard System and Multi-Carrier System Healthcare Integrated General Ledger Accounting System Changes
AB–03–075	• Provider Education Article: Quarterly Provider Update
AB–03–076	• Remittance Advice Message for Denial of Clinical Diagnostic Laboratory Services Denied Due to Frequency Edits
AB–03–077	• Revised Disclosure Desk Reference for Call Centers
AB–03–078	• Medicare Fee-for-Service Contractor Guidance of the Health Insurance Portability and Accountability Act Privacy Rule Business Associate Provisions
AB–03–079	• Claims Processing Instructions for the Utah Graduate Medical Education Demonstration
AB–03–080	• Single Drug Pricer Clarification for Code J7342
AB–03–081	• Data Center Testing and Production—Electronic Correspondence Referral System User Manual 6.0
AB–03–082	• Medicare Secondary Payer Prepayment and Postpayment Workload Reporting—Activity Code Definitions
AB–03–083	• Screening of Complaints Alleging Fraud and Abuse
AB–03–084	• Changes to the Laboratory National Coverage Determination Edit Software for July 1, 2003
AB–03–085	• Beneficiary Notice of Implementation of Outpatient Therapy Service Limitations
AB–03–086	• New Automatic Notice of Change to Medicare Secondary Payer Auxiliary File
AB–03–087	• Common Working File Edits With Unsolicited Responses for Skilled Nursing Facility Consolidated Billing
AB–03–088	• Prohibition on New Trading Partner Agreements With Certain Entities for the Purpose of Coordination of Benefits
AB–03–089	• Coverage and Billing for Home Prothrombin Time International Normalized Ratio Monitoring for Anticoagulation Management
AB–03–090	• Coverage of Compression Garments in the Treatment of Venous Stasis Ulcers
AB–03–091	• Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification
AB–03–092	• Expanded Coverage of Positron Emission Tomography Scans and Related Claims Processing Requirements for Thyroid Cancer and Perfusion of the Heart Using Ammonia N–13
AB–03–093	• Correction: Coverage and Billing Requirements for Electrical Stimulation for the Treatment of Wounds
	Hospice Manual (CMS Pub. 10) (Superintendent of Documents No. HE 22.8/2)
800	• Screening Pap Smears and Screening Pelvic Examinations
801	• Notice to Beneficiaries Peer Review Organization Monitoring of Hospital Admission Notice to Beneficiaries
802	• Frequency of Billing
803	• Magnetic Resonance Angiography
804	• Screening Pap Smears and Screening Pelvic Examinations
805	• International Classification of Diseases 9th Edition Clinical Modification

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.		Manual/Subject/Publication No.
		Home Health Agency Manual (CMS Pub. 11) (Superintendent of Documents No. HE 22.8/5)
304	•	Frequency of Billing
		Coverage Issues Manual (CMS Pub. 6) (Superintendent of Documents No. HE 22.8/14)
169	•	Stem Cell Transplantation
170	•	Magnetic Resonance Angiography
171	•	Positron Emission Tomography Scans
172	•	Intestinal and Multi-Visceral Transplantation
		Peer Review Organization (CMS Pub. 19) (Superintendent of Documents No. 22.8/8–15)
90	•	Eligibility—has been moved to the Pub. 100–10, Medicare Quality Improvement Organizations Manual, Chapter 2, which can be found at *http://www.cms.hhs.gov/manuals.* Data Management—has been moved to the Pub. 100–10, Medicare Quality Improvement Organizations Manual, Chapter 8, which can be found at *http://www.cms.hhs.gov/manuals.* Management—has been moved to the Pub. 100–10, Medicare Quality Improvement Organizations Manual, Chapter 13, which can be found at *http://www.cms.hhs.gov/manuals.* Performance Evaluation—has been moved to the Pub. 100–10, Medicare Quality Improvement Organizations Manual, Chapter 15, which can be found at *http://www.cms.hhs.gov/manuals.*
		Hospice Manual (CMS Pub. 21) (Superintendent of Documents No. HE 22. 8/18)
67	•	Frequency of Billing
		Rural Health Clinic Manual & Federally Qualified Health Centers Manual (CMS Pub. 27) (Superintendent of Documents No. He 22. 8/19:985)
38	•	Magnetic Resonance Angiography
		Rural Dialysis Facility Manual (Non-Hospital Operated) (CMS Pub. 29) (Superintendent of Documents No. 22.8/13)
95	•	Frequency of Billing
		Provider Cost Reporting Forms and Instructions Provider Reimbursement Manual—Part 2
		Chapter 36/Form CMS–2552–96 (CMS Pub. 15–2–36) (Superintendent of Documents No. HE 22.8/4)
10	•	Hospital Healthcare Complex Cost Report
		Program Integrity Manual (CMS Pub. 100–08)
40	•	Local Provider Education and Training Program
41	•	Definitions Related To Enrollment Benefit Integrity/Payment Safeguard Contractor vs. Provider Enrollment Contractors Forms Disposition Processing the Application Identification Adverse Legal Actions Practice Location Ownership and Managing Control Information (Organizations) Ownership and Managing Control Information (Individuals) Delegated Official Ambulance Services Suppliers Certified Basic Life Support Independent Diagnostic Testing Facilities—Attachment 1 Entities That Must Enroll as Independent Diagnostic Testing Facilities

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.		Manual/Subject/Publication No.
		Review of Attachment 2, Independent Diagnostic Testing Facility
		Enrollment Checks
		Special Consideration
		Reassignment of Benefits—Form CMS–855R
		Reassignment of Benefits Statement
		Attestation Statement
		Enrolling Certified Suppliers Who Enroll With Carrier
		Managed Care Organization
		Application Sectional Instructions for Intermediaries
		Processing the Application
		Provider Identification
		Adverse Legal Actions
		Practice Location
		Ownership and Managing Control Information (Organizations)
		Chain Home Office Information
		Billing Agency
		Staffing Company
		Capitalization Requirements for Home Health Agencies
		Contact Person
		Certification Statement
		Delegated Official
		Special Processing Situation
		Community Mental Health Centers
		Benefit Improvement and Protection Act of 2000 Provisions
		Community Mental Health Centers Enrollment and Change of Ownership
		Site Visit
		Process
		Deactivation of Billing Numbers for Inactive Community Mental Health Centers
		State Survey Regional Office Process
		Changes of Information—New Form CMS–855 Data
		Change Requirement
		Procedures for Request for Additional Information, Approval, Denial or Transmission of Recommendations
		Request for Additional Information
		Approval and Recommendations for Approval
		Denials
		Failure to Sign and/or Date the Application
		Revocations
		Time Frame for Application Processing
		Matrix
		Verification and Validation of Information
		Fraud Investigation Database
		Healthcare Integrity and Protection Data Bank
		Excluded Parties List System
		Enrollment of Hospitals, Assignment of Billing Numbers
		Provider-Based Processing and Changes in Status
		Web Site
		File Maintenance and Review
42	•	Effectuating Favorable Final Appellate Decisions That a Beneficiary Is Confined To Home
43	•	Medical Records Information Reported Electronically
		Electronic Media Claim Flat File Record for End-Stage Renal Disease
		Argus Filed Descriptions and Formats
		Managed Care Manual (Pub. 100–16)
23	•	Introduction
		General Requirements
		Basic Rule
		Services of Noncontracting Providers and Suppliers
		Types of Benefits
		Availability and Structure of Plans
		Terms of Medicare+Choice Plans
		Multiple Plans in One Service Area
		Centers for Medicare & Medicaid Services Review and Approval of Medicare+Choice Benefits
		Requirements Relating To Medicare Conditions of Participation
		Provider Networks
		Requirements Relating To Benefits
		Basic Benefits
		Additional Benefits
		Supplemental Benefits—Mandatory Supplemental and Optional Supplemental

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.	Manual/Subject/Publication No.
	Basic Versus Supplemental Benefits
	Medicare Covered Benefits
	Medicare+Choice Medical Savings Account Plan Benefits
	General Rule
	Countable Expenses
	Services After the Deductible
	Balance Billing
	The Annual Deductible
	Special Rules on Supplemental Benefits for Medicare+Choice Medical Savings Account Plans
	Point of Service Option
	General Rule
	Accessing Plan Contracting Providers
	Financial Cap
	Enrollee Information and Disclosure
	Prompt Payment
	Point of Services Related Data
	Services Area
	Definition
	Factors That Influence Service Area Approvals
	The ''County Integrity Rule''
	Coordination of Benefits With Employer Group Health Plans and Medicaid
	General Rule
	Requirements, Rights, and Beneficiary Protection
	Medicare Secondary Payer Procedures
	Basic Rule
	Responsibilities of the Medicare+Choice Organization
	Medicare Benefits Secondary to Group Health Plans and Large Group Health Plans
	Collecting From Other Entities
	Collecting From Other Insurers or the Enrollee
	Collecting From Group Health Plans and Large Group Health Plans
	Medicare Secondary Payor
	National Coverage Determinations and Legislative Changes in Benefits
	Definitions
	General Rules
	Sources for Obtaining Information
	Discrimination Against Beneficiaries Prohibited
	General Prohibition
	Additional Requirements
	A Medicare+Choice Organization's Responsibility
	Disclosure Requirements
	Introduction
	Disclosure Requirements at Enrollment (and Annually Thereafter)
	Disclosure Upon Request
	Information Pertaining to a Medicare+Choice Organization Changing Its Rules or Provider Network
	Other Information That Is Disclosable
	Access to (and Availability of) Service
	Introduction
	Access and Availability Rule for Coordinated Care Plans
	Rules for All Medicare+Choice Organizations to Ensure Continuity of Care
	Ambulance, Emergency, and Urgently Needed, and Post-Stabilization Care Services Ambulance
	Emergency and Urgently Needed Services
	Post-Stabilization Care Services
	Confidentiality and Accuracy of Enrollee Records
	General Rule
	Private Fee-for-Service Plans
	Information on Advance Directives
	Definition
	Basic Rule
	State Law Primary
	Content of Enrollee Information and Other Medicare+Choice Obligations
	Incapacitated Enrollees
	Community Education Requirements
	Medicare+Choice Organization Rights
	Appeal and Anti-Discrimination Rights

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.	Manual/Subject/Publication No.
24	• Introduction
	Provider Involvement in Policy-Making
	Physician Consultation in Medical Policies
	Consultation in Development of Credentialing Policies
	Written Information on Physician Participation
	Interference With Health Care Professionals' Advice to Enrollees Prohibited
	Provider Anti-Discrimination
	Provider Participation
	Notice of Reason for Not Granting Participation
	Confirmation of Eligibility for Participation in Medicare Excluded and Outpatient Physical Therapy and Opt-Out Provider Checks
	Credentialing, Monitoring, and Recredentialing
	Suspension, Termination, or Nonrenewal of Physician Contract
	Institutional Provider and Supplier Certification
	Physician Incentive Plans
	Requirements and Limitations
	Disclosure of Physician Incentive Plans
	Provider Indemnification of Medicare+Choice Organization Prohibited
	Special Rules for Services Furnished by Non-Contract Provider
25	• Introduction
	Terminology
	Rules Governing Premiums and Cost Sharing
	Monthly Premiums
	Uniformity of Premiums
	Segmented Services Area Option
	Timing of Payments
	Monetary Inducements Prohibited
	Submission of Proposed Premiums and Related Information
	General Rule
	Information Required for Coordinated Care Plans and Private Fee-For-Service Plans
	Average Payment Rate
	Centers for Medicare & Medicaid Services Review
	Limits on Premiums and Cost-Sharing Amounts
	Rules for Coordinated Care Plans
	Rules for Medicare+Choice Private Fee-for-Service Plans
	Special Rules for Mid-Year (Benefit) Enhancement
	General Rule
	Incorrect Collections of Premiums and Cost Sharing Definitions
	Refund Methods
	Reduction by Centers for Medicare & Medicaid Services
	Adjusted Community Rate Process
	General Information
	Standard Method
	Initial Rate Calculation
	Initial Rate Adjustment by Medicare+Choice Organization
	Initial Rate Adjustment by Centers for Medicare & Medicaid Services
	Other Methods for Computing Adjusted Community Rate
	Special Rule for Centers for Medicare & Medicaid Services Average Payment
	Rate or Adjusted Community Rate Calculation
	Centers for Medicare and Medicaid Services Review
	Sufficiency of Documentation and Periodic Audits
	Requirement for Additional Benefits—42 Code of Federal Regulations 422.312
	Definitions
	General Information
	Stabilization Fund
	Establishment of a Stabilization Fund
	Limit Per Contract Period
	Exception to the Limit Per Contract Period
	Cumulative Limit
	Interest on and Accounting of Reserved Funds
	Withdrawal From a Stabilization Fund
	Criteria for Centers for Medicare & Medicaid Services Approval
	Basis for Denial
	Form of Payment
	Additional Benefits
	Part B Premium Reduction As an Additional Benefit
	Additional Health Care Benefits
	Reduction of Charges to Enrollees for Basic Benefits
	Additional Supplemental Health Care Benefits and Related Premiums

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2003 Through June 2003]

Transmittal No.	Manual/Subject/Publication No.
	Detailed Instructions
	Enrollees Who Elect Hospice While Remaining Enrolled in a Medicare+Choice Plan
	Hospice Benefits
	Medicare+Choice Non-Medicare-Covered Benefits
	Medicare+Choice Medicare-Covered Benefits (Except Hospice)
	Medicare+Choice Non-Medicare-Covered Benefits
	Enrollees with End-Stage Renal Stage Disease User Fees
	End-Stage Renal Disease Network Fee
	Information Campaign User Fee
	Waivers for Medicare+Choice Organization Contracts With Employer or Union Groups
	Background
	Section 617 Waiver Categories Approved
	Service Areas
	Adjusted Community Rate Filings
	Coordination of Benefits
	Effect on Medicare+Choice Plan Cash Flow
	Effect on Adjusted Community Rate Calculations

Addendum IV.—Regulation Documents Published in the Federal Register

[April 2003 Through June 2003]

Publication date	FR vol. 68 page No.	CFR parts affected	File code	Title of regulation
April 2, 2003	15973	42 CFR Part 440	CMS–2132–P	Medicaid Program; Provider Qualifications for Audiologists.
April 4, 2003	16652	42 CFR Parts 422 and 489.	CMS–4024–FC	Medicare Program; Improvements to the Medicare+Choice Appeal and Grievance Procedures.
April 16, 2003	18654		CMS–1256–N	Medicare Program; Notice of Ambulance Fee Schedule in Accordance With Federal District Court Order.
April 17, 2003	18895	45 CFR Part 160	CMS–0010–IFC	Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings.
April 25, 2003	22268	42 CFR Parts 405, 412, 413, and 485.	CMS–1203–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates; Correction.
April 25, 2003	22064	42 CFR Parts 420, 424, 489, and 498.	CMS–6002–P	Medicare Program; Requirements for Establishing and Maintaining Medicare Billing Privileges.
April 25, 2003	20394		CMS–1251–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council—May 19, 2003.
April 25, 2003	20393		CMS–4052–N	Medicare Program: Meeting of the Advisory Panel on Medicare Education—May 21, 2003.
April 25, 2003	20391		CMS–2182–PN	Medicare and Medicaid Programs; Application by the Community Health Accreditation Program (CHAP) for Continued Approval of Deeming Authority for Hospices.
April 25, 2003	20349	42 CFR Parts 422 and 489.	CMS–4024–CN	Medicare Program; Improvements to the Medicare+Choice Appeal and Grievance Procedures; Correction.
April 25, 2003	20347	42 CFR Part 411	CMS–1809–F3	Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date.
April 28, 2003	22453	45 CFR Part 160	CMS–0010–IFC (OFR) Correction).	Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings; Correction.
May 2, 2003	23410	45 CFR Part 148	CMS–2179–FC	Grants to States for Operation of Qualified High Risk Pools.
May 16, 2003	26786	42 CFR Part 412	CMS–1474–P	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2004.
May 16, 2003	26758	42 CFR Parts 409, 413, 440, and 483.	CMS–1469–P	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update.
May 16, 2003	26621		CMS–4060–N	Medicare Program; Town Hall Meeting on the Refinement of the Minimum Data Set (MDS), Version 3.0.
May 19, 2003	27154	42 CFR Parts 412 and 413.	CMS–1470–P	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates.
May 29, 2003	32053		CMS–2185–N	Fiscal Year 2003 Program Announcement; Availability of Funds and Notice Regarding Applications.
May 30, 2003	32528		CMS–2177–FN	Medicare and Medicaid Programs; Approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Deeming Authority for Hospices.
May 30, 2003	32527		CMS–3116–N	Medicare Program; Request for Nominations for Members for the Medicare Coverage Advisory Committee.

Addendum IV.—Regulation Documents Published in the Federal Register—Continued

[April 2003 Through June 2003]

Publication date	FR vol. 68 page No.	CFR parts affected	File code	Title of regulation
May 30, 2003	32406	42 CFR Part 416	CMS–1885–CN	Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003.
May 30, 2003	32400	42 CFR Parts 410, 414, and 485.	CMS–1204–CN	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations.
June 4, 2003	33579	42 CFR Parts 412 and 413.	CMS–1470–P (OFR Correction).	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates.
June 4, 2003	33495		CMS–5003–N	Medicare Program; Demonstration: End-Stage Renal Disease—Disease Management.
June 6, 2003	34122	42 CFR Part 412	CMS–1472–F	Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates and Policy Changes.
June 9, 2003	34494	42 CFR Part 412	CMS–1243–F	Medicare Program; Change in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment Systems.
June 9, 2003	34492	42 CFR Parts 412 and 413.	CMS–1470–P (OFR Correction).	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates; Correction.
June 10, 2003	34768	42 CFR Part 413	CMS–1469–P2	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update.
June 27, 2003	38370		CMS–1259–N	Medicare Program; Public Meeting in Calendar Year 2003 for New Clinical Laboratory Tests Payment Determinations.
June 27, 2003	38370		CMS–5003–N2	Medicare Program; Extension of Date of Submissions and Informational Meeting on the Application Process for the End-Stage Renal Disease—Disease Management Demonstration.
June 27, 2003	38359		CMS–9017–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January 2003 Through March 2003.
June 27, 2003	38346		CMS–4062–N	Medicare and Medicaid Programs; Solicitation for Information on the Hospital CAHPS.
June 27, 2003	38345		CMS–1257–N	Medicare Program: Notice of the Practicing Physicians Advisory Council Rechartering.
June 27, 2003	38269		CMS–6012–N6	Medicare Program; Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement.
June 27, 2003	38206	45 CFR Part 146	CMS–2152–F	Amendment to the Interim Final Regulation for Mental Health Parity.

Addendum V.—National Coverage Determinations, April 2003 Through June 2003

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that became effective during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce impending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by section of the Coverage Issues Manual (CIM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage.*

NATIONAL COVERAGE DECISIONS

[April 2003 Through June 2003]

CIM section	Title	Issue date	Effective date
	Coverage Issues Manual (CIM) (CMS Pub. 06)		
50–14	Magnetic Resonance Angiography of the Abdomen and Pelvis	05/09/03	07/01/03
35.85.1	Implantable Automatic Defibrillators	06/06/03	10/01/03
50–36	PET for Thyroid Cancer	06/20/03	10/01/03
50–36	PET for Soft Tissue Sarcoma	06/20/03	10/01/03
50–36	PET for Alzheimer's Disease/Dementia	06/20/03	10/01/03

NATIONAL COVERAGE DECISIONS—Continued

[April 2003 Through June 2003]

CIM section	Title	Issue date	Effective date
50–36	PET for Myocardial Perfusion of the Heart Using Ammonia N–13	06/20/03	10/01/03

PM No.	Title	Issue date	Effective date
	Program Memorandum (PM)		
AB–03–084	Changes to the Laboratory NCD Edit Software For 07/03 (Blood Counts, Blood Glucose Testing, HIV Testing).	06/06/03	07/01/03

Addendum VI.—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist CMS, the Food and Drug Administration (FDA) assigns each device with an FDA-approved investigational device exemption (IDE) to one of two categories. Category A refers to experimental/investigational device exemptions, and Category B refers to nonexperimental/investigational device exemptions. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number and category (A or B) for the second quarter, April through June 2003.

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 2ND QUARTER 2003

IDE	Category
G010175	B
G010354	B
G020083	B
G020115	A
G020230	B
G020231	B
G020244	B
G020273	B
G020307	B

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 2ND QUARTER 2003—Continued

IDE	Category
G020319	B
G020323	B
G030001	B
G030007	B
G030034	B
G030044	B
G030045	B
G030051	B
G030054	B
G030055	B
G030056	B
G030058	B
G030061	B
G030062	B
G030063	B
G030064	B
G030065	B
G030073	B
G030074	B
G030075	B
G030078	B
G030080	B
G030082	B
G030088	B
G030089	B
G030090	B
G030091	B
G030095	B
G030096	B
G030097	B

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 2ND QUARTER 2003—Continued

IDE	Category
G030101	B
G030103	B
G030104	B
G030105	A
G030106	B
G030108	B
G030109	B
G030110	B
G030113	B
G030114	B
G030115	B
G030117	B
G030118	B
G030120	B
G030122	B
G030124	B
G030126	B
G030128	B

Addendum VII.—Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB control Nos.	Approved CFR sections in title 42, title 45, and title 20 (note: sections in title 45 are preceded by ''45 CFR,'' and sections in title 20 are preceded by ''20 CFR'')
0938–0008	414.40, 424.32, 424.44.
0938–0022	413.20, 413.24, 413.106.
0938–0023	424.103.
0938–0025	406.28, 407.27.
0938–0027	486.100–486.110.
0938–0034	405.821.
0938–0035	407.4.
0938–0037	413.20, 413.24.
0938–0041	408.6.
0938–0042	410.40, 424.124.
0938–0045	405.711.
0938–0046	405.2133.
0938–0050	413.20, 413.24.
0938–0062	431.151, 435.1009, 440.250, 440.220, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5.
0938–0065	485.701–485.729.
0938–0074	491.1–491.11.
0938–0080	406.7, 406.13.
0938–0086	420.200–420.206 and 455.100–455.106.

OMB control Nos.	Approved CFR sections in title 42, title 45, and title 20 (note: sections in title 45 are preceded by ''45 CFR,'' and sections in title 20 are preceded by ''20 CFR'')
0938–0101	430.3.
0938–0102	413.20, 413.24.
0938–0107	413.20, 413.24.
0938–0146	431.800–431.865.
0938–0147	431.800–431.865.
0938–0151	493.1405, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1469, 493.1483, 493.1489.
0938–0155	405.247.
0938–0170	493.1269–493.1285.
0938–0193	430.10–430.20 and 440.167.
0938–0202	413.17, 413.20.
0938–0214	411.25, 489.2, 489.20.
0938–0236	413.20, 413.24.
0938–0242	416.44, 418.100, 482.41, 483.270, 483.470.
0938–0245	407.10, 407.11.
0938–0251	406.7.
0938–0266	416.41, 416.83, 416.47, 416.48.
0938–0267	485.56, 485.58, 485.60, 485.64, 485.66, 410.65.
0938–0269	412.116, 412.632, 413.64, 413.350, 484.245.
0938–0270	405.376.
0938–0272	440.180, 441.300–441.305.
0938–0273	485.701–485.729.
0938–0279	424.5.
0938–0287	447.31.
0938–0296	413.17.
0938–0300	431.8.
0938–0301	413.20, 413.24.
0938–0313	418.1–418.405.
0938–0328	482.12, 482.22, 482.27, 482.30, 482.41,482.43,482.53,482.56, 482.57, 482.60, 482.61, 482.62, 482.66.
0938–0334	491.9 Subpart A.
0938–0338	486.104, 486.106, 486.110.
0938–0354	441.6.
0938–0355	484.10–484.52.
0938–0357	409.40–409.50, 410.36, 410.170, 411.4–411.15, 421.100, 424.22, 484.18 and 489.21.
0938–0358	412.20–412.30.
0938–0359	412.40–412.52.
0938–0360	405.2100–405.2184.
0938–0365	484.10, .11, .12, .14, .16, .18, .20, .36, .48, .52.
0938–0372	414.33.
0938–0378	482.60–482.62.
0938–0379	418.1–418.405.
0938–0380	482.1–482.66.
0938–0386	405.2100–405.2171.
0938–0391	488.18, 488.26, 488.28.
0938–0426	476.104, 476.105, 476.116, 476.134.
0938–0429	447.53.
0938–0443	473.18, 473.34, 473.36, 473.42.
0938–0444	1004.40, 1004.50, 1004.60, 1004.70.
0938–0445	412.44, 412.46, 431.630, 456.654, 466.71, 466.73, 466.74, 466.78.
0938–0447	405.2133.
0938–0449	440.180, 441.300–441.310.
0938–0454	424.2.
0938–0456	412.105.
0938–0463	413.20, 413.24.
0938–0465	411.404, 411.406, 411.408.
0938–0467	431.17, 431.306, 435.910, 435.920, 435.940–435.960.
0938–0469	417.107, 417.478.
0938–0470	417.143 and 417.408.
0938–0477	412.92.
0938–0484	424.123.
0938–0486	498.40–498.95.
0938–0501	406.15.
0938–0502	433.138.
0938–0512	486.301–486.325.
0938–0526	475.100 Subpart C, 475.106 and 475.107, 462.102, 462.103.
0938–0534	410.38, 424.5.
0938–0544	493.1–493.2001.
0938–0565	411.20–411.206.
0938–0566	411.404(b)(c), 411.406(d), 411.408(d)(2) and (f).
0938–0567	Part 498 Subpart H, Part 498 Subparts D and E, and 20 CFR 404.933.
0938–0573	412.256 and 412.230.
0938–0581	493.1–493.2001.
0938–0599	493.1–493.2001.
0938–0600	405.371, 405.378 and 413.20.

OMB control Nos.	Approved CFR sections in title 42, title 45, and title 20 (note: sections in title 45 are preceded by ''45 CFR,'' and sections in title 20 are preceded by ''20 CFR'')
0938–0610	417.436, 417.801, 417.436(d), 422.128, 430.12(c)(1)(ii), 431.20, 31.107, 434.28, 483.10, 484.10(c)(ii), 489.102.
0938–0612	493.1–493.2001.
0938–0618	433.68, 433.74, 447.272.
0938–0653	493.
0938–0655	493.184.
0938–0657	405.2110, 405.2112.
0938–0658	405.2110, 405.2112.
0938–0667	482.12, 488.18, 489.20 and 489.24.
0938–0673	430.1.
0938–0679	410.38.
0938–0685	410.32, 410.71, 413.17, 424.57, 424.73, 424.80, 440.30, 484.12.
0938–0686	493.551–493.557.
0938–0688	486.301–486.325.
0938–0690	488.4–488.9, 488.201.
0938–0691	412.106.
0938–0692	466.78, 489.20, and 489.27.
0938–0700	417.479, 417.500; 422.208, 422.210; 434.44, 434.67, 434.70; 1003.100, 1003.101, 1003.103 & 1003.106.
0938–0701	422.152.
0938–0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180.
0938–0703	45 CFR 148.120, 148.124, 148.126, and 148.128.
0938–0714	411.370–411.389.
0938–0717	424.57.
0938–0721	410.33.
0938–0722	422.370–422.378.
0938–0723	421.300–421.318.
0938–0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24.
0938–0732	417.126, 417.470.
0938–0734	45 CFR 5b.
0938–0739	413.337, 413.343, 424.32, 483.20.
0938–0742	422.300–422.312.
0938–0749	424.57.
0938–0753	422.000–422.700.
0938–0754	441.152.
0938–0758	413.20, 413.24.
0938–0760	Part 484 Subpart E, 484.55.
0938–0761	484.11, 484.20.
0938–0763	422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, and 422.560–422.622.
0938–0768	417.800–417.840.
0938–0770	410.2.
0938–0778	422.64, 422.111, 422.560–422.622.
0938–0779	417.470, 417.126(a), 422.210(h), 422.64(10).
0938–0781	411.404–411.406, 484.10.
0938–0786	438.352, 438.360, 438.362, 438.364.
0938–0787	406.28, 407.27.
0938–0790	460.12, 460.22, 460.26, 460.30, 460.32, 460.52, 460.60, 460.70, 460.71, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.208, 460.210.
0938–0792	491.3, 491.8, 491.11.
0938–0798	413.65, 419.42.
0938–0802	419.43.
0938–0810	482.45.
0938–0819	45 CFR 146.121.
0938–0823	420.41.
0938–0824	482.13(f)(7), 440.10(1)(3)(iii).
0938–0827	45 CFR 146.141.
0938–0829	422.568.
0938–0832	489.
0938–0833	483.350–483.376.
0938–0840	422.152(b)(2).
0938–0841	431.636, 457.50, 457.60, 457.70,457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, and 457.1180.
0938–0842	412 and 413.
0938–0846	411.1, 411.350–411.357 and 424.22.
0938–0857	419.
0938–0860	419.
0938–0866	45 CFR Part 162.
0938–0872	483.20, 413.337.
0938–0873	422.152.
0938–0874	45 CFR Parts 160 and 162.
0938–0878	Part 422 Subparts F and G.
0938–0883	45 CFR Parts 160 and 164.
0938–0887	45 CFR 148.316, 148.318, 148.320.

OMB control Nos.	Approved CFR sections in title 42, title 45, and title 20 (note: sections in title 45 are preceded by ''45 CFR,'' and sections in title 20 are preceded by ''20 CFR'')
0938–0897	412.22, 412.533.

[FR Doc. 03–24069 Filed 9–25–03; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3062–N]

RIN 0938–AK61

Medicare Program; Revised Process for Making Medicare National Coverage Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice revises the process we will use to make a national coverage determination for a specific item or service under sections 1812, 1832, 1861, 1862, 1869, and 1871 of the Social Security Act, as revised by sections of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000. This notice further clarifies our decision-making process and increases the opportunities for public participation.

EFFECTIVE DATE: This notice is effective on October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Vadim Lubarsky, (410) 786–0840.

SUPPLEMENTARY INFORMATION: Availability of Copies and Electronic Access Copies: To order hard copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800, or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

In the April 27, 1999 **Federal Register** (64 FR 22619), we published a notice that announced changes to our internal procedures for developing a national coverage determination (NCD) and making the NCD process more open and understandable to the public. As we strive for continuous improvement of our processes, and in recognition of the changes that section 522 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) requires, we are revising our process for developing an NCD in order to make the process more efficient and ensure that we have access to all relevant information to make fully informed decisions. (BIPA, Pub. L. 106–554, was enacted on December 21, 2000.) The processes described in this notice apply to both scope of benefit and section 1862(a)(1) determinations as defined in the Social Security Act (the Act). This notice replaces the April 27, 1999 notice and will be effective on October 27, 2003. Improvements include the following:

- Updating and organizing the reconsideration process into one section, and distinguishing it from an initial request to make an NCD.
- Defining, streamlining, and organizing the contact/inquiry information into one section.
- Revising, formalizing, and updating the elements that constitute a complete, formal request to reflect best practices.
- Adding a section on information that does *not* constitute a complete, formal request.
- Updating and clarifying the conditions for acceptance of a complete, formal request.
- Making it clear that all evidence currently available must be adequate for us to conclude that the item or service is reasonable and necessary.
- Establishing two main tracks for the initial NCD request. One track is a highly time-structured track only available to aggrieved parties (section IV.E track #2), as defined in section 522 of BIPA. The other track is open to anyone, including aggrieved parties, beneficiaries, and manufacturers, and offers a more collaborative and less time-stringent process (section IV.E track #1).

Historically, we have based our coverage determinations on descriptive information, and scientific and clinical evidence. Under the revised BIPA coverage process, we will continue to use descriptive information, and scientific and clinical evidence as a basis for our coverage determinations.

II. Purpose of This Notice

This notice outlines the process we will use to make an NCD under the Medicare program. It sets forth the steps we are taking to make the NCD process more efficient, while maintaining as open and transparent a process as appropriate. It describes the following:

- A tracking system that provides public notice of our acceptance of a complete, formal request and subsequent actions in a web-based format.
- The process we will institute to afford notice and opportunity to comment before implementation of an NCD.
- Information that does and does *not* constitute a complete, formal request.
- The process for asking us to reconsider an existing NCD based on new information, including new medical or scientific evidence.
- The basis and purpose of a decision memorandum and where it can be accessed on our Web site.
- The revisions made to the NCD process under BIPA, including a response to public comments, and how these revisions affect the current NCD process and any subsequent challenges to an NCD.

In addition, we will continue to pursue an ongoing effort to work with various sectors of the scientific and medical community to develop and publish on the CMS Web site documents that describe our approach when analyzing scientific and clinical evidence to develop an NCD. Interested parties will be able to offer comments. Accordingly, these documents will make our coverage process more open and offer the public a better understanding into our NCD process.

In our April 1999 notice, we announced that we anticipated publishing a final coverage criteria rule that would be followed by sector-specific guidance documents (64 FR 22620). Since then, we published a notice of intent to engage in rulemaking for coverage criteria (May 16, 2000, 65 FR 31124) and had a subsequent town

hall meeting. Given that there are substantial competing interests about the coverage criteria, we believe it best not to pursue rulemaking. In the meantime, as we have done in the past 35 years, we would continue to need to make coverage decisions and interpret what is ''reasonable and necessary.'' We believe that in the interest of expediting NCDs and making the process as predictable as possible that, in the interim, nonbinding sector-specific guidance documents would be helpful. Sector-specific guidance documents refer to how our expectations and evaluation of evidence may differ in some respects depending on the nature of the topic under review. Evidence can vary greatly, for example, between a diagnostic and an item of DME or between a near-term fatal condition and a life-long chronic condition.

Thus, we are notifying the public that we may choose to publish sector-specific guidance documents even in the absence of a final rule. We will consider doing so as the need arises. This is also notice that we currently do not plan to develop a proposed rule based on the May 2000 Notice of Intent.

Section 522(b) of BIPA amends section 1862(a) of the Act to require the Secretary ''to make available to the public the data (other than proprietary data) considered in making the determination.'' In a notice of proposed rulemaking published on August 22, 2002 (67 FR 54534), we described the process for handling proprietary information related to NCDs. After considering public comments, we will establish and announce a policy that addresses that issue and defines ''proprietary'' data in the final rule.

III. Medicare Coverage—General Principles

A. Statutory Authority

Administration of the Medicare program is governed by title XVIII of the Act. Under the Medicare program, the scope of benefits available to eligible beneficiaries is prescribed by law and divided into several main parts. Part A is the hospital insurance program, and Part B is the voluntary supplementary medical insurance program.

The scope of benefits under Part A and Part B is defined in the Act. See sections 1812 (scope of Part A), 1832 (scope of Part B); and 1861(s) (definition of medical and other health services). Part C, known as the Medicare+Choice program, includes at a minimum, all of the items and services (other than hospice care) available under Part A and Part B to individuals residing in the area served by the plan. Some benefit categories are defined more broadly than others. Specific health care services must fit into one of these benefit categories, and not be otherwise excluded, to be eligible for coverage under the Medicare program.

The Act does not contain a comprehensive list of specific items or services eligible for Medicare coverage. Rather, it lists categories of items and services, and vests in the Secretary the authority to make determinations about which specific items and services within these categories can be covered under the Medicare program. That is, the Act allows Medicare to cover medical devices, surgical procedures, and diagnostic services, but generally does not identify specific covered or excluded items or services.

Medicare payment is contingent upon a determination that a service meets a benefit category, is not specifically excluded from coverage, and the item or service is ''reasonable and necessary.'' Section 1862(a)(1)(A) of the Act states that, subject to certain limited exceptions, no payment may be made for any expenses incurred for items or services that are not ''reasonable and necessary'' for the diagnosis and treatment of illness or injury or to improve the functioning of a malformed body member. For over 30 years, we have exercised these authorities to make a coverage determination regarding whether a specific item or service meets one of the broadly defined benefit categories and can be covered under the Medicare program.

As revised by section 522 of BIPA, an NCD is now defined to be a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII of the Act, but does not include a determination about which code, if any, is assigned to a particular item or service covered under title XVIII, or a determination with respect to the amount of payment for a particular covered item or service.

In general, an NCD is a national policy statement granting, limiting, or excluding Medicare coverage for a specific medical item or service. Often, an NCD is written in terms of a particular patient population that may receive (or not receive) Medicare reimbursement for a particular item or service. An NCD is binding on all Medicare carriers, fiscal intermediaries (FIs), quality improvement organizations (QIOs), health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). Before October 1, 2001, NCDs made under section 1862(a)(1) of the Act could not be reviewed by administrative law judges (ALJs). Effective October 1, 2001, BIPA expanded the definition of NCDs, and provides that all NCDs shall not be reviewed by ALJs under section 1869(f)(1) of the Act.

It is important to distinguish between a decision memorandum and an NCD. The decision memorandum is the public document that lays out and describes the analytic framework for our decision on a topic under NCD review. Its purpose is to inform the reader of the decision, the reasons for the decision and process followed, and provide a summary of the evidence considered. The decision memorandum alerts the public of our intent to implement the decision at some point in the future. The NCD itself follows the decision memorandum, sometimes by a number of months. It is the formal instruction to our claims processing contractors regarding how to process claims (when to pay, when not to pay, pay only when certain clinical conditions are met). Those instructions have a specific effective date dictating when claims will be processed according to the new criteria.

Generally, once we receive a complete formal request, it takes 90 days to develop a decision memorandum. As noted above, the decision memorandum is not the NCD, but rather is one step towards making an NCD for an item or service. After the decision memorandum is prepared, we must prepare the actual NCD. The NCD may be issued as a manual instruction or other document such as a program memorandum, ruling, or **Federal Register** notice. The NCD may be accompanied by additional information for our contractors that is necessary to ensure that Medicare claims will be properly processed when the NCD is effective. As noted above, except in very limited circumstances, preparing the NCD will occur after this 90-day review process.

We expect to make any payment changes or other systems changes dictated by the NCD instructions effective within 180 calendar days of the first day of the next full calendar quarter that follows the date we issue the decision memorandum. Thus, the decision memorandum and payment change can take up to 270 days from the date a formal request for an NCD is accepted for review by CMS. The date when a Medicare beneficiary may obtain the item or service and receive Medicare payment for that item or service under an NCD that expands coverage will not be known until the NCD is completed and has been assigned an effective date. The NCD will be implemented by all of

our contractors on the effective date. Additional details concerning this process, as well as certain limited exceptions, are described later in this notice.

B. Medicare Contractors and Coverage Policies

We contract with private insurance companies, referred to as carriers and FIs, to process Medicare claims; that is, claims-payment contractors. Local QIOs are also involved in the claims adjudication process. We refer to all of these entities as ''Medicare contractors.''

Medicare contractors review and adjudicate claims to ensure that Medicare payments are made only for those items or services covered under Medicare Part A or Part B. In the absence of a specific NCD, coverage determinations are made locally by the Medicare contractors within the boundaries established by the law. Sometimes these determinations are made on a claim-by-claim basis.

Medicare contractors will also publish local coverage determinations (LCDs) that will provide guidance to the public and medical community within a specified geographic area. An LCD is defined in section 522 of BIPA as a determination made by an FI or a carrier under Medicare Part A or Part B, as applicable, for whether or not a particular item or service is covered on an intermediary-wide or carrier-wide basis under those parts, in accordance with section 1862(a)(1)(A) of the Act. An LCD may not conflict with an NCD, but the LCD may supplement an NCD.

C. Procedural

We continue to expect that all evidence currently available must be adequate for us to conclude that the item or service is reasonable and necessary. In the absence of adequate evidence, we may conclude that the item or service is not reasonable and necessary.

D. Differences Between Food and Drug Administration (FDA) and CMS Review

Parties interested in the coverage of a drug or device (other than a Category B investigational device exemption (IDE) device, which is addressed through a separate process as described in 42 CFR 405.201 through 405.215) may contact us with an inquiry on Medicare coverage while the particular drug or device is proceeding through the Food and Drug Administration (FDA) premarket review process. We are willing to meet and discuss issues within this context. Because the FDA is charged with regulating whether devices or pharmaceuticals are safe and effective for use by consumers, generally we will not accept a request for a device or pharmaceutical that has not been approved or cleared for marketing by the FDA for at least one indication; one exception is Category B IDE devices. An IDE Category B device is a non-experimental/investigational device for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval or clearance for that device type.

Both CMS and the FDA review scientific evidence, and may review the same evidence, to make purchasing and regulatory decisions, respectively. However, CMS and its contractors make coverage determinations and the FDA conducts premarket review of products under different statutory standards and different delegated authority (67 FR 66755, November 1, 2002). Whereas the FDA must determine that a product is safe and effective as a condition of approval, CMS must determine that the product is reasonable and necessary as a condition of coverage under section 1862(a)(1)(A) of the Act. CMS adopts FDA determinations of safety and effectiveness, and CMS evaluates whether or not the product is reasonable and necessary for the Medicare population. Although an FDA-regulated product must receive FDA approval or clearance (unless exempt from the FDA premarket review process) for at least one indication to be eligible for Medicare coverage, except for Category B devices under an IDE clinical trial (*see* 60 FR 48417, September 19, 1995), FDA approval/clearance alone does not generally entitle that device to coverage.

IV. CMS's Process for Making National Coverage Determinations

There are several ways an individual or entity can contact us about NCDs. One approach involves informal contacts, discussed in section IV.A of this notice. The other approach involves ''formal requests.''

If we have not issued an NCD for a particular item or service, an external requestor may use one of two formal tracks to submit a request to make an initial NCD. One track, established by section 522 of BIPA, is available only to aggrieved parties, as defined by statute to be ''individuals entitled to benefits under Part A, or enrolled under Part B, or both, who are in need of the items or services that are the subject of the coverage determination'' and is highly time-structured. The other track is open to anyone, including aggrieved parties, other beneficiaries, and manufacturers, and offers a more collaborative and less time-stringent process. The NCD development process under BIPA-legislated time frames will only be initiated when we receive a complete, formal request from an aggrieved party.

A. Informal Contacts and Inquiries

The public frequently raises general questions about the coverage of items and services to us by telephone, the postal mail system, electronic means, or in person. These questions may include, but are not limited to, asking us to explain the current coverage of a particular item or service, or requesting assistance with, or advice about, a possible submission of a formal request for an NCD. We consider all of these contacts to be informal. Although informal contacts are not confidential, we will not announce the substance of these contacts on our Web site.

If the requestor asks for specific information about how to request an NCD, we will advise them on implications of such a request and explain what is required for us to accept a submission as a complete, formal request. We will offer suggestions to the requestor to clarify the amount and kind of information necessary for us to evaluate whether an item or service is ''reasonable and necessary'' under the Act, and in limited instances, we may offer to assist the requestor in meeting these requirements.

B. What Constitutes a Complete, Formal Initial Request for a National Coverage Determination or Formal Request for Reconsideration

We consider a request to be a complete, formal request, only if *all* of the following conditions are met:

- The formal request letter must be in writing.
- The formal request letter and supporting documentation must be submitted electronically (unless there is good cause for only a hardcopy submission).
- The requestor must identify the request as a ''formal request for an NCD'' or a ''formal request for reconsideration'' and identify the NCD development track chosen (described in detail in section IV.E of this notice).
- The requestor must state the benefit category or categories of the Medicare program to which the requestor believes the item or service applies. Examples of benefit categories may include durable medical equipment, physician services, inpatient hospital services, and diagnostic tests. The requestor may

recommend one or more benefit categories for the item or service and must submit supporting documentation justifying the recommendation. We must have all information, both from the requestor and internally, to make a benefit category determination, before the request can be considered complete. If an item or service can fit into more than one benefit category, we have the discretion to assign it to the most appropriate benefit category.

• The requestor must submit adequate supporting documentation along with the formal letter, including the following:

—A full and complete description of the item or service in question.

—A specific, detailed description of the proposed use of the item or service, including the target Medicare population and the medical condition(s) for which it can be used.

—A compilation of the supporting medical and scientific information currently available that measures the medical benefits of the item or service. This may include portions of primary study data that have been separately submitted to the FDA as part of its submission package and are deemed most relevant for our review.

—If the requestor has submitted an application to the FDA for market approval of the product for which coverage is sought, then a copy of the ''integrated summary of safety data'' and ''integrated summary of effectiveness data,'' or the combined ''summary of safety and effectiveness data,'' portions of the FDA application should be included in the request for an NCD. These documents will ensure that our review is comprehensive.

—An explanation of the design, purpose, and method of using the item or equipment, including whether the item or equipment is for use by health care practitioners or patients.

—A statement from the requestor (in cases in which there is an aggrieved party, the statement must be from that party) containing the following:

++An explanation of the relevance of the evidence selected.

++Rationale for how the evidence selected demonstrates the medical benefits for the target Medicare population.

++Information that examines the magnitude of the medical benefit.

++Reasoning for how coverage of the item or service will help improve the medical benefit to the target population.

++In the case of an aggrieved party, how that party is ''in need'' of the item or service.

—A description of any clinical trials or studies currently underway that might be relevant to a decision regarding coverage of the item or service.

—Information involving the use of a drug or device subject to FDA regulation as well as the status of current FDA regulatory review of the drug or device involved. An FDA regulated article would include the labeling submitted to the FDA or approved by the FDA for that article, together with an indication of whether the article for which a review is being requested is covered under the labeled indication(s). (We recognize that the labeling on FDA-approved products sometimes changes. For purposes of our review, we are interested in the labeled indications at the time a requestor submits a formal request. If, during our review, the labeled indication or status of a pending FDA approval or clearance changes, we expect the requestor to notify us.)

—In the case of items that are eligible for a 510(k) clearance by the FDA, identification of the predicate device to which the item is claimed to be substantially equivalent.

C. When a National Coverage Determination Request or Reconsideration Request Is Not Considered Complete and Formal

When a requestor submits a request for an NCD or reconsideration, we will review the materials to determine if it meets the definition of a complete, formal request as defined in section IV.B of this notice. If the request lacks adequate supporting documentation to enable us to conduct our review, we will notify the requestor and explain our rationale. If we accept the request, we will notify the requestor of the acceptance. We will also post our acceptance on our Web site under our list of pending coverage issues.

As we previously stated, we will not consider a request to be a complete, formal request if any of the following occur:

• Request is not in writing.

• Request is not accompanied by sufficient, supporting documentation.

• Information provided does not address relevance, usefulness, or the medical benefits of the item or service to the Medicare population.

• Information does not fully explain the design, purpose, and method of using the equipment for which the request is made.

• Information provided is not supported by scientific or clinically relevant data.

• Information provided is not relevant to the item or service for which the request is made.

• Request does not clearly identify the statutorily defined benefit category to which the requestor believes the item or service applies and does not contain enough information for us to make a benefit category determination.

• Request is considered an informal contact described in section IV.A.

D. Acceptance of a Complete, Formal National Coverage Determination or Reconsideration Request

In the rare event that we have a large volume of NCD requests to review at once, we retain the flexibility to prioritize these requests based on the magnitude of the impact on the Medicare program and beneficiaries. This flexibility will enable us to ensure that we can pay priority attention to those requests that have potential for significant impact on our beneficiaries—a life-saving cancer treatment, a breakthrough in cardiac pacing, etc. In order to do so, we may have to temporarily suspend or diminish our review of other issues that, while important, do not have the same profound potential. We expect to use any such authority infrequently.

For these cases, two lists, an accepted list and lower priority list (based on impact) will be maintained and available on our Web site; the lower priority list will be processed based on the order of acceptance as resources become available. Requestors can use this public priority list to verify whether the request has been accepted, the status of the request, and where the requestor is in the order of priorities.

Upon acceptance of a request, we will notify the requestor and post a tracking sheet announcing our review of this issue on the list of pending coverage issues on the coverage Web site. Posting of the tracking sheets permits interested individuals to participate and monitor the progress of the NCD process. This is a key element in making our NCD process more efficient, open, and accessible to the public. Once a formal request is posted, there will be an opportunity for public participation and submission of additional evidence. (If after accepting the request, we decide that the request does not fall under a benefit category, we will issue a noncoverage NCD.)

E. Review of a Complete, Formal Request for a National Coverage Determination

Development of a complete, formal request for an NCD can be initiated in one of three ways:

Track #1: Request for New National Coverage Determinations Initiated by Any Party, Including Beneficiaries, Manufacturers, Providers, or Suppliers.

A request to make an NCD can be received from an individual or entity who identifies an item or service as a potential benefit (or to prevent potential harm) to the Medicare population; this requestor can be either an aggrieved party as defined by section 522 of BIPA, or a nonaggrieved party. This may include a manufacturer, provider, supplier, or party who requests our consideration of a particular issue for an NCD. All requests must meet the requirements in this notice. An initial request can only be made if we have not previously issued an NCD for a particular item or service.

If an individual or other entity initiates a request, we expect to generally issue a decision memorandum within a 90-day period. More complex issues, or issues that require referral to the Medicare Coverage Advisory Committee or for a Technology Assessment, would generally take longer than 90 days. Generally, we expect to make a payment change effective within 180 calendar days of the next full calendar quarter that follows the date we issue the decision memorandum.

Though the 90-day clock in this option is not as strict as the process used only for aggrieved parties, this track offers a more collaborative process than track two. The opportunities for greater collaboration will flow from the more flexible approach to the 90-day clock. Requestors and other interested parties will be able to provide additional information, clarify issues, and engage in dialogue as questions arise. The ability to follow this path is necessarily constrained when we are under a strict, narrowly-framed 90-day response timeline.

Track #2: Request by an Aggrieved Party for New National Coverage Determinations Where There Were No National Coverage or Noncoverage Determinations.

Aggrieved parties are defined in section 1869(f)(5) of the Act as ''individuals entitled to benefits under Part A, or enrolled under Part B, or both, who are in need of the items or services that are the subject of the coverage determination.'' Section 1869(f)(4) of the Act permits these individuals to make a request that the Secretary issue a national coverage or noncoverage determination with respect to a particular type or class of items or services, if the Secretary had not previously made a coverage or noncoverage determination. Thus, this track can be invoked only for an initial request if we have not issued a coverage or noncoverage NCD.

As noted in section E, track 1, generally we expect to make a payment change effective within 180 calendar days of the first day of the next full calendar quarter that follows the date we issue a decision memorandum. This time is necessary to identify and make any necessary coding, payment, and systems changes. However, if an aggrieved party initiates a request under track 2, we expect to issue a decision memorandum and an NCD (that is, the manual instruction or other appropriate document) to our contractors by no later than the end of the 90-day period, in accordance with the statutory timeframe. The NCD will include the effective date of the policy. In cases where we are not able to complete our review within this 90-day timeframe, the law requires that we issue a notice that includes an identification of the remaining steps in the review process and a deadline by which we will complete that review.

A decision memorandum will include a clear statement of the basis for the determination including our responses to comments we receive from the public. The actual effective date of the NCDs will depend on whether we must make changes to our claims processing systems to allow Medicare payment; this step is not included in the 90-day clock. However, whether systems changes are needed and how long they may take to implement will be reflected in the effective date contained in the NCD.

Track #3: Internally Generated Request.

We may generate a request to make an NCD in the interest of the general health and safety of Medicare beneficiaries. Generally, this process is similar to the externally generated request process.

F. NCD Reconsideration Process

When an NCD currently exists, any individual or entity may request that we reconsider any provision of that NCD by filing an acceptable request for an NCD reconsideration. We will consider a request to revise an existing NCD at any time, but only if the requestor presents documentation that meets either of the following criteria:

- Additional material medical and/or scientific information that was not considered during the initial review, that is, results from new clinical trials, new scientific or medical publications, or studies supporting the request.
- Arguments that our conclusion materially misinterpreted the existing evidence at the time the NCD was made.
- If the request is for reconsideration of the benefit category determination, the requestor must recommend a benefit category and, in support of the recommendation, submit either (1) new information that was not considered during the initial benefit category determination, or (2) arguments that our determination decision materially misinterpreted the applicable statutory provisions, the applicable regulatory provisions, or the existing evidence at the time the benefit category determination was made.

We will not accept a request for reconsideration that is not submitted in writing, identified as ''A Formal Request for Reconsideration,'' and accompanied by the required, additional, supporting information as described more fully in sections IV.B and IV.C. Upon receipt of the additional information as outlined above, we will consider this a formal request for an NCD reconsideration and initiate the reconsideration process. We generally expect to complete the reconsideration process and issue a decision memorandum within 90 calendar days. Our current NCD will remain in effect during the reconsideration process until we issue a revised NCD, if applicable.

A reconsideration of an NCD must be distinguished from a challenge to an existing NCD. Under section 522 of BIPA and section 1869(f)(1) of the Act, aggrieved parties may elect to challenge an existing NCD. On August 22, 2002, we published a proposed rule (67 FR 54534) that addresses procedures for the Departmental Appeals Board (Board) review process under section 522 of BIPA.

A request for review of new clinical and scientific evidence that was published or available only after the date the initial NCD was issued may be submitted as a request for reconsideration. The reconsideration of an existing NCD is part of our coverage determination process so that our medical and scientific experts have an opportunity to examine this new evidence. Thus, a reconsideration of an NCD is separate and distinct from an initial NCD request and separate from the Board review process under section 522 of BIPA.

As noted above, because reconsiderations are outside of the strict BIPA timeline, they offer several alternative opportunities for individuals

and entities that may make the process more advantageous:

- The reconsideration process does not involve a formal adjudicatory hearing.
- The process may be more collaborative with the original clinical reviewers at CMS, with greater opportunity for clarification and dialogue.

G. Improvements in the National Coverage Determination Process

Our 90-day clock for considering or reconsidering coverage requests will begin once we have accepted the complete, formal request. Acceptance of a complete formal request begins a series of internal timeframes over the course of 90 days.

We will post the acceptance of a complete, formal request on our Web site. This initiates a 30-day comment (public input) period, during which submission of evidence or other comments relevant to the request will be accepted in accordance with section 522(b) of BIPA. During this time, the public, including the requestor of the NCD or reconsideration, may submit comments and additional information or evidence of studies regarding the NCD issue under review. We will provide a response to these comments in our decision memoranda.

There may be times, such as a public health emergency, when there is good cause for developing an NCD more rapidly, and we may need to reduce the time period for public comment. For instance, in the case of a national disaster, it may be necessary to quickly modify an NCD to facilitate access to covered services in a particular service area. In these emergency situations, we may expedite the development of an NCD and reduce the notice and comment period, during which evidence can be submitted. For instance, following the flooding in Texas in the summer of 2001, we issued an NCD shortly after a request was made in order to permit payments for transplant recipients.

After the close of the 30-day comment (public input) period, we will only accept additional information or evidence from the public if we request information or during subsequent Medicare Coverage Advisory Committee (MCAC) proceedings, if applicable. We must strictly enforce the 30-day comment (public input) period, in which evidence can be submitted, to ensure that we make timely decisions. We will consider and incorporate the relevant public input, and any subsequent information received during MCAC meetings, in the decision memorandum and before implementing the NCD for the particular item or service.

We will use the remainder of the 90-day timeframe to research and evaluate the NCD request. This process entails, but is not limited to, the following activities:

- Review pertinent data and scientific literature a requestor submits.
- Research relevant sources of evidence in addition to evidence a requestor submits. These may include, but are not limited to, other peer-reviewed medical, technical, and scientific literature, recommendations of expert panels, unpublished data used to secure FDA approval, and clinical experience.
- Formulate inclusion and exclusion parameters for literature searches.
- Develop analytic questions needed for subsequent policy formulation.
- Determine whether the issue warrants further review either by the MCAC or through a health technology assessment (HTA) from an agency such as the Agency for Healthcare Research and Quality (AHRQ).
- Evaluate all pertinent evidence.

In general, by the end of the 90-day period following formal acceptance of an NCD or reconsideration request, we will issue a decision memorandum on that request. We will outline, in a decision memorandum, one of the following three actions:

(1) Our intention to issue an NCD, with or without limitations.

(2) Our intention to issue a national noncoverage determination.

(3) A determination that an NCD or a noncoverage determination is not appropriate at the present time.

We will provide notice if we determine that additional time will be necessary to complete an NCD review. We will identify the remaining steps in the review process and the deadline by which we will complete the review and take an action described in (1), (2), or (3) above. This option may include such actions as referring the request to the MCAC or to a third party for an HTA as described in section IV.H of this notice.

A decision memorandum is not an NCD, but rather a statement announcing our intent to issue policy. The decision memorandum details the analysis of the scientific and clinical literature, and provides the rationale for the coverage determination. The decision memorandum will include the rationale we used in reaching our determination. If we make a coverage determination to modify an existing NCD that results in a reduction of coverage, in whole or in part, we will also publish a notice in the **Federal Register** and announce our coverage determination on our Web site. The decision memorandum is not binding on our contractors, and no change in existing policy is effective until we publish the revised NCD in the relevant coverage manual or other issuance with a specific effective date. Generally, by the end of the 270-day period following formal acceptance of an NCD or reconsideration request, we will make effective the payment changes for an NCD on that request.

We will create and maintain a complete and adequate record of all NCDs that are developed. The record will provide an explanation of our rationale for an NCD and include the evidence we considered. This record will form the basis for any subsequent requests for reconsideration of the NCD, and will also serve as the formal record of review for any subsequent challenges to the NCD under section 1869(f)(1) of the Act. Information contained in the record will conform to the proprietary data policy in the 522 BIPA final rule.

H. Health Technology Assessments (HTAs)

During our review of an NCD request, we may require an HTA to complete our review. Generally, an HTA provides an independent analysis of all scientific and clinical evidence available on a particular health care technology. We may request an HTA when there is conflicting or complex medical and scientific literature available, or when we believe an independent analysis of all relevant literature will assist us in determining whether an item or service is reasonable and necessary. We may also request an HTA in preparation for an upcoming MCAC meeting.

We will obtain services from the Agency for Healthcare Research and Quality, or a third party with the requisite experience in HTA and evidence-based medicine to ensure the technical competence and fairness of the HTA.

If we receive a formal request for coverage on an item or service for which an HTA is already underway, we will inform the subsequent requestor of the status of the pending HTA, as well as an estimated time for completion. Any request for an HTA will be reflected on our Web site tracking sheet, followed by either the executive summary or the full and complete HTA.

I. Medicare Coverage Advisory Committee (MCAC)

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing establishment of the MCAC, and requesting nominations for membership. The MCAC has met

periodically since September 1999, to discuss coverage issues, make judgments about the adequacy and conclusions of existing scientific evidence, make recommendations to us about whether particular items or services can be considered ''reasonable and necessary'' under title XVIII of the Act, and to advise the Secretary on matters relating to the interpretation, application, or implementation of section 1862(a)(1) of the Act. The MCAC operates under a 2-year charter. The MCAC charter is available on our Web site.

The primary role of the MCAC is to provide independent, expert advice and assistance to us in making sound coverage decisions based upon the reasoned application of scientific evidence. Voting members must possess the scientific and technical competence commensurate with this purpose. In addition, a consumer and industry representative serve as nonvoting members on each panel. To ensure their full participation, nonvoting members have access to all information and data (other than information exempt from disclosure relating to trade secrets or where the disclosure would present a conflict of interest) made available to voting members. The MCAC meetings are open to the public, and time is allotted for public comment on the particular coverage issue under consideration.

In general, we may refer a coverage issue to the MCAC if it meets any of the following conditions:

- It is the subject of significant scientific or medical controversy; that is, there is a major split in opinion among researchers and clinicians regarding the medical benefits of the item or service, the appropriateness of staff or setting, or some other significant controversy that would affect whether the item or service is ''reasonable and necessary'' under the Act.
- It is the subject of controversy among the general public.
- It has the potential to have a major impact on a target population of the Medicare program.

If we refer a coverage issue to the MCAC, we will schedule a public meeting to discuss the coverage issue under consideration. All MCAC meetings are subject to the requirements of the Federal Advisory Committee Act. We will publish a notice in the **Federal Register** generally 30 days before holding an MCAC meeting. We will announce in our notice the draft agenda, time, and place of the meeting so that all interested persons will have ample notification. During the course of each meeting, there will be time allotted for public comment. We ask that all requests for presentation and consideration of evidence to the MCAC, submit a request to us in writing at least 20 days before the meeting. The MCAC considers all available evidence, presentations, and comments. The MCAC makes recommendations to us. Those recommendations are advisory.

We expect the MCAC to make recommendations as expeditiously as possible. We will provide an estimate of when we believe we will receive the MCAC recommendation. Once the MCAC makes a formal recommendation, we will post it on our Web site. Generally, within 60 calendar days of receiving the formal MCAC recommendation, we will issue a decision memorandum. In the decision memorandum, we will explain the MCAC recommendation, and how it was considered in our final determination.

J. Implementation of National Coverage Determinations

The general 90-day clock for NCD and reconsideration requests described for individuals who are not aggrieved parties or aggrieved parties who elect the collaborative approach includes time for the analysis, processing, and development of a decision memorandum. Upon making a decision, numerous internal, related steps remain before a payment change can take place. We must determine which codes the providers, suppliers, and Medicare contractors will use for submission and payment of claims consistent with the decision and issue corresponding instructions. We must also determine the appropriate Medicare payment level. As previously mentioned, coding and payment decisions are not included within the definition of an NCD for purposes of a Board review. Finally, NCDs often require us to develop and issue claims processing instructions to our systems maintainers and Medicare contractors to ensure accurate payment. Medicare contractors generally implement systems changes at the start of a calendar quarter, and instructions are required well in advance of the beginning of each quarter in order to install and test the systems changes.

The NCD (issued as a program memorandum, manual instruction, **Federal Register** notice, or CMS ruling) will include the effective date when our Medicare contractors will implement any change in payment that may result from the NCD. Generally, we expect to make a payment change effective within 180 calendar days of the first day of the next full calendar quarter that follows the date we issue the decision memorandum. As stated previously, an NCD is binding on all Medicare contractors; that is, carriers, FIs, QIOs, HMOs, CMPs, and HCPPs. NCDs that expand coverage are binding on Medicare+Choice plans. We will also publish a reference to each national coverage decision in the **Federal Register** as part of our quarterly listing of program issuances.

K. Essential Differences in This Notice

In summary, this notice distinguishes between the two tracks available for an external party to request a new NCD when no NCD currently exists. For an initial request, the highly time-structured track is only available to aggrieved parties, as defined in section 522 of BIPA. The other track is open to anyone, including aggrieved parties, beneficiaries, and manufacturers, and offers a more collaborative and less time-stringent process. We also explain the steps that anyone can take to request a reconsideration of an existing NCD.

L. How To Access CMS's Home Page

Our home page can be accessed by entering ''*http://www.cms.hhs.gov.*'' To access information about our coverage process, select ''Development of Coverage Policies'' and then ''Medicare Coverage Process,'' or *http://www.cms.hhs.gov/coverage.*

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of PRA requires that we solicit comment on the following issues:

- Need for the information collection and its usefulness in carrying out the proper functions of our agency.
- Accuracy of our estimate of the information collection burden.
- Quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the collection requirements referenced in section IV.B ''What Constitutes a Complete, Formal Initial Request for a National Coverage Determination or Formal Request for Reconsideration'' of this notice, are currently approved under OMB approval number 0938–0776.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Since this notice revises the process we will use to make an NCD for a specific item or service and has no economic impact on the Medicare program, we have determined this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. We believe that few small entities will submit requests. We estimate that approximately five beneficiaries or small entities may submit a request in a year.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1862, 1869(f), and 1871 of the Social Security Act (42 U.S.C. 1395y, 1395ff(b)(3), and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93774, Medicare-Supplementary Medical Insurance Program).

Dated: September 15, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 15, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–24361 Filed 9–25–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Counter Terrorism Products Regulated by the Center for Biologics Evaluation and Research: Effective Strategies to Assist in Product Development; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Counter Terrorism Products Regulated by the Center for Biologics Evaluation and Research: Effective Strategies to Assist in Product Development.'' The purpose of the public workshop is to provide a forum for discussing strategies to assist in the effective development of products regulated by the Center for Biologics Evaluation and Research (CBER) that may be used in counter terrorism efforts (e.g., vaccines, blood and blood products including immunoglobulins, gene therapies, and human cellular and tissue-based products).

Date and Time: The workshop will be held on October 23, 2003, from 8:30 a.m. to 5 p.m., and on October 24, 2003, from 8:30 a.m. to 5 p.m.

Location: The workshop will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD.

Contact Person: Gloria Blankenship, CBER (HFM–49), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000, FAX 301–827–3079, e-mail: *Blankenship@cber.fda.gov*.

Registration: Mail, e-mail, or fax your registration information (including name, professional degree, title, e-mail address, firm name, address, telephone, and fax number) to Gloria Blankenship, (see *Contact Person*) by October 10, 2003. There is no registration fee for the public workshop. Because seating is limited, we recommend early registration. There will be no onsite registration.

If you need special accommodations due to a disability, please contact Gloria Blankenship (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The purpose of this public workshop is to provide a forum for sharing information and strategies to assist in the efficient and successful development of products regulated by CBER and used for counter terrorism efforts. CBER is interested in promoting a discussion of issues related to the development of counter terrorism products, including manufacturing and clinical issues, and other relevant issues. The workshop is intended to help sponsors address commonly asked questions and avoid common misunderstandings and to provide practical information on successful product development strategies.

FDA invites participants to submit issues for discussion prior to the workshop. There will be an opportunity to raise additional questions and issues for discussion at the meeting. Mail or fax your issues and questions to Gloria Blankenship (see *Contact Person*) by October 10, 2003.

FDA will post on CBER's Web site (*http://www.fda.gov/cber/*) the agenda for this meeting, when finalized.

Transcripts: Please note that transcripts of the meeting will not be prepared.

Dated: September 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–24303 Filed 9–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

[DHS/S&T–N–2003–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of new Privacy Act system of records.

SUMMARY: The Department of Homeland Security (DHS) proposes a new system of records subject to the Privacy Act of 1974, as amended. This system, if adopted, will include personal information pertaining to individuals who submit information to DHS related to applications for designation of a technology as a Qualified Anti-Terrorism Technology (QATT) or for certification of a QATT for purposes of the government contractor defense and inclusion on an approved product list for DHS, both under provisions of Subtitle G of Title VIII of the Homeland Security Act of 2002—the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (''the SAFETY Act'' or ''the Act''). The Homeland Security Act of 2002 is Public Law 107–296, 6 U.S.C. 441–444. System records will be disclosed to government contractors for processing, and some records may be disclosed to members of the public who request such disclosure.

DATES: Written comments must be submitted on or before October 27, 2003.

ADDRESSES: Please address your comments to the Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528. You must identify the Docket Number DHS/S&T–N–2003–0001 at the beginning of your comments, and you should submit two copies of the comments. You may also submit comments via e-mail at *privacy@dhs.gov*. Please reference the Docket Number shown above in the subject line of the e-mail. If you wish to receive confirmation that DHS has received your comments, please include a self-addressed, stamped postcard with your request. DHS will make comments received available online at *www.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: If you have any questions about this notice, please call Nuala O'Connor Kelly, Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–282–8000; Fax: 202–772–9738.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DHS is publishing this notice of a proposed new agency system of records, to be designated as ''SAFETY Act Records''. This system is intended to provide information pertinent to technologies submitted to DHS for designation or certification, or both, under provisions of the SAFETY Act.

The purpose of the proposed records system, if adopted, would be to create a list of technologies submitted by individuals, business entities, and other entities seeking liability protection under provisions of the SAFETY Act. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of risk management and litigation management. The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. The Act therefore creates certain liability limitations for ''claims arising out of, relating to, or resulting from an act of terrorism'' where qualified anti-terrorism technologies have been deployed. The Act does not limit liability for harms caused by anti-terrorism technologies where no act of terrorism has occurred.

The DHS intends to compile and maintain these records in a secure electronic database designed, developed, operated and serviced by agency and/or contractor personnel who will be bound by restrictions of the Privacy Act. The system would be under the general supervision of the Office of Science and Technology, with technical support from the DHS's Office of the Chief Information Officer.

The DHS anticipates that the information collected and maintained in the proposed system may include, at a minimum, telephone numbers, home addresses, and other identifying information for individuals who submit technologies for designation or certification under the Act, as described above. It is anticipated that the number of such individual submitters may be very small relative to the total number of other submitters who submit technologies for certification or approval under the Act.

The DHS intends to use electronic means for collecting this information. System records would be subject to appropriate safeguards to prevent unauthorized disclosure or tampering.

The DHS is seeking public comments on the proposed system of records as described above.

S&T .0001

SYSTEM NAME:

SAFETY Act Records.

SECURITY CLASSIFICATION:

The proposed system may include national security classified information.

SYSTEM LOCATION:

Office of Science and Technology, U.S. Department of Homeland Security, Washington, D.C. 20528. System records may be maintained, in whole or in part, by off-site contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit technologies for designation or certification under the SAFETY Act, and who voluntarily submit protected personal information in connection with the submission.

CATEGORIES OF RECORDS IN THE SYSTEM:

For Privacy Act purposes, home telephone numbers and home addresses, and possibly other personal identification information, for individual submitters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subtitle G of Title VIII of the Homeland Security Act of 2002 (Pub. L. 107–296)—the Support Anti-terrorism by Fostering Effective Technologies Act of 2002.

PURPOSE(S):

To maintain records of technologies submitted for designation or certification under the SAFETY Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system may be disclosed as permitted by 5 U.S.C. 552a(b). Records may be made available to contractors supporting DHS and the SAFETY Act records. Records may be made available or referred on an automatic basis to other Federal, state or local government authorities for regulatory, compliance, or law enforcement purposes. Records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement or other assignment for the DHS, when necessary to accomplish an agency function related to this system of records. Records may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially

relevant to a proceeding, or in connection with criminal law proceedings. Information permitted to be released to the news media and the public may be made available unless it is determined that release of the specific information would constitute an unwarranted invasion of personal privacy. Information may be disclosed as necessary to respond to inquiries by Members of Congress on behalf of individual constituents who apply for SAFETY Act funding. A record may be disclosed as a routine use to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a computer database maintained on magnetic disks and tape, or other electronic systems determined by DHS. Paper copies will also be retained.

RETRIEVABILITY:

Retrievable by the names of individual submitters of technologies for designation or certification under the SAFETY Act or by a particular identifying number.

SAFEGUARDS:

Access to computerized records by electronic security precautions. With the exception of those uses discussed under the Routine Use of Records section of this notice, access restricted to agency personnel and contractors whose responsibilities require access.

RETENTION AND DISPOSAL:

Records retained for an initial period of six years, and for additional six year periods if renewed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Science and Technology, U.S. Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

To obtain notification of whether the system contains a record pertaining to a particular individual, that person must submit a written request under procedures prescribed pursuant to the DHS's Freedom of Information Act/ Privacy Act regulations, 68 FR 4056, January 27, 2003, to be codified at 6 CFR part 5.

RECORD ACCESS PROCEDURES:

See notification procedures above.

CONTESTING RECORD PROCEDURES:

See notification procedures above. Where an individual believes the system has erroneously recorded or omitted information that is collected and maintained by the system, the individual will be afforded the opportunity to register, change, or delete that information.

RECORD SOURCE CATEGORIES:

Individuals who submit technologies for designation or certification under the SAFETY Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 23, 2003.

Nuala O'Connor Kelly,

Privacy Officer.

[FR Doc. 03–24423 Filed 9–23–03; 2:46 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14878]

Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments; extension of comment period, and notice of public meetings.

SUMMARY: On July 1, 2003, the Coast Guard published a notice requesting comments on how best to address implementation of Automatic Identification System (AIS) carriage requirements on certain navigable waters of the U.S. for vessels not on international voyages. The comment period for that notice was scheduled to end September 29, 2003, but we are extending the comment period through January 5, 2004. This extension will permit the Coast Guard to receive comments in response to our previously published notice after the public has seen the final rule that will be published this fall. We are also announcing the dates and locations of three public meetings.

DATES: Comments and related material must reach the Docket Management Facility on or before January 5, 2004. Public meetings will be held on the following dates in the following cities:

November 5, 2003, 9 a.m. to 12 a.m. (noon), in New Orleans, LA;

November 13, 2003, 9:30 a.m. to 12:30 p.m., in New Bedford, MA; and

December 5, 2003, 9 a.m. to 12:30 p.m. in Seattle, WA.

ADDRESSES: *Comments.* You may submit comments identified by Coast Guard docket number USCG–2003–14878 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

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

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

Meetings. The meetings will be held at the following locations:

New Orleans, LA—8th Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, Room B100 New Orleans, LA 70130.

New Bedford, MA—Location to be announced via separate notice.

Seattle, WA–13th Coast Guard District, Federal Building, 915 Second Avenue, 4th Floor, Northern Auditorium, Seattle, WA 98174.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Jorge Arroyo, Office of Vessel Traffic Management (G–MWV–1), Coast Guard, telephone 202–267–6277, fax 202–267–4826 or e-mail: *jarroyo@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to our request for comments, by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' three paragraphs below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number

(USCG–2003–14878), indicate the specific question you are responding to, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Public Meetings

We are intending to hold at least three public meetings regarding this notice on the expansion of AIS carriage requirements for U.S. waters. The three scheduled meetings will be held—

- November 5, 2003, 9 a.m. to 12 a.m. (noon), at 8th Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, Room B100, New Orleans, LA 70130.
- November 13, 2003, 9:30 a.m. to 12:30 p.m., in New Bedford, MA at a location to be announced via a separate notice.
- December 5, 2003, 9 a.m. to 12:30 p.m., at 13th Coast Guard District, Federal Building, 915 Second Avenue, 4th Floor, Northern Auditorium, Seattle, WA 98174.

Reason for Extension of Comment Period

In a temporary interim rule published in the **Federal Register** on July 1, 2003 (68 FR 39353), the Coast Guard required Automatic Identification System (AIS) carriage as agreed to by the international community in amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS), and as directed by the Maritime Transportation Security Act of 2002 (MTSA), Public Law 107–295. That rulemaking, however, covers only vessels on international voyages and certain vessels on specified waterways (Vessel Traffic Service Areas) of the United States.

As we stated in a request for comments published July 1, 2003 (68 FR 39369), entitled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters,'' the MTSA required that specific categories of vessels be equipped with and operate an AIS in all navigable waters of the U.S., unless the Secretary finds that AIS is not needed for safe navigation on specified navigable waters.

Our July 1, 2003, notice, which is available in the docket under **ADDRESSES**, requested comments on how best to address implementation on the remaining navigable waters of the U.S. for vessels not on international voyages. We are extending the comment period for that notice to January 5, 2004. We are also republishing and adding to the questions posed previously in our notice. This extension will allow us to receive comments in response to this notice after the public has seen the final rule that will complete the ongoing rulemaking involving AIS. As previously stated, the Coast Guard plans to issue that final rule before November 25, 2003 (68 FR 39354, July 1, 2003).

Questions

We need the public's assistance in answering the following questions, and any additional information provided on this topic is welcome. Note, we have republished the questions as posed in our July 1, 2003 notice (68 FR 39353), and inserted additional terms, denoted in brackets [], to either further clarify or to solicit additional comments regarding a specific question.

In responding to each question, please explain your reasons for each answer as specifically as possible so that we can carefully weigh the consequences and impacts of any future actions we may take.

(1) Recognizing that AIS may ultimately be required on all [U.S.] navigable waters, what particular waterways or ports should be implemented before others?

(2) Are there particular [U.S. navigable] waterways where the AIS requirements should be waived? Why?

(3) AIS is not specifically mandated (by the MTSA) on all vessels. The MTSA, however, does allow the Secretary to require AIS on any vessel if deemed necessary for safe navigation. Should other vessels (*e.g.*, commercial vessels under 65 feet in length, towing vessels under 26 feet and 600 horsepower, dredges and floating plants, recreational vessels, offshore facilities, [non-self propelled vessels or barges, particularly those carrying hazardous cargo], or Mobile Offshore Drilling Units) be required to have AIS?

(4) SOLAS expects nations to implement their AIS carriage on their domestic fleet (vessels over 500 gross tonnage and passenger vessels not on international voyage) not later than July 1, 2008. However, the MTSA requires AIS by December 31, 2004. Knowing this, should certain vessels be granted temporary exemptions regarding the compliance dates in MTSA?

(5) Under what circumstances, if any, should a vessel be exempted from the AIS requirements per the MTSA exemption?

(6) SOLAS defines a passenger vessel as carrying 12 or more passengers. VTS regulations define VTS users as passenger vessels over 100 gross tons carrying 1 or more passengers or those certificated to carry 50 or more passengers. The MTSA allows the Secretary to determine the threshold (number of passengers) [for hire or not for hire] when determining which passenger vessels are required to have AIS. Should we expand AIS carriage beyond what is already defined in SOLAS and our rule?

(7) Should the Coast Guard encourage or require the use of systems such as electronic chart display and information system (ECDIS) and electronic chart system (ECS) to display AIS information to enhance navigation safety? Are there other systems that could be used for this purpose?

(8) Would you be more likely to install an ECDIS or ECS on your vessel, to display AIS information, if the system could be used to comply with an existing requirement to carry nautical charts?

Dated: September 22, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–24364 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Serially Numbered Substantial Containers Entering the United States Duty-Free

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Serially Numbered Substantial Containers Entering the U.S. Duty-Free. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19558) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 27, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or

(5) other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Serially Numbered Substantial Containers Entering the U.S. Duty-Free.

OMB Number: 1651–0035.

Form Number: N/A.

Abstract: The marking is used to provide for duty free entry of holders or containers which were manufactured in the United States and exported and returned without having been advanced in value or improved in condition by any process or manufacture. The regulations provide for duty free entry of holders or containers of foreign manufacture if duty has been paid before.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, or other for-profit.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 4.5 hours.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annualized Cost on the Public: $1,350.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: September 15, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–24341 Filed 9–25–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Foreign Trade Zone Admission, Status Designation, and Activity Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19554) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 27, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general

public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report.

OMB Number: 1651–0029.

Form Number: Customs Forms 214, 214A, 214B, 214C, and 216.

Abstract: Customs Forms 214, 214A, 214B, and 214C, Application for Foreign Trade Zone Admission and/or Status Designation, are used by business firms which bring merchandise into a foreign trade zone to register the admission of such merchandise to zones and to apply for the appropriate zone status.

Current Actions: This submission is being submitted to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 7.9 hours.

Estimated Total Annual Burden Hours: 79,500.

Estimated Total Annualized Cost on the Public: $2,000,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection,1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: September 12, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–24342 Filed 9–25–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application-Permit-Special License Unlading/Lading, Overtime Services

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application/Permit/Special License, Unlading/Lading Overtime Services. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19556) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 27, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or

(5) other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application/Permit/Special License, Unlading/Lading Overtime Services.

OMB Number: 1651–0005.

Form Number: Form CBP–3171.

Abstract: Form CBP–3171 is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers and for overtime services of CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen, which is subject to free or duty-paid entry.

Current Actions: This submission is to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses, or other for-profit.

Estimated Number of Respondents: 399,000.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 51,870.

Estimated Total Annualized Cost on the Public: $627,627.00.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: September 11, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–24343 Filed 9–25–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 500 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, Washington, DC 20585; (202) 586–4548; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC, 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division; Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5063; (202) 685–9200; (These are not toll-free numbers).

Dated: September 18, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 9/26/2003

Suitable/Available Properties

Buildings (by State)

California

Bell Federal Service Center
5600 Rickenbacker Road
Bell Co: Los Angeles CA 90201–
Landholding Agency: GSA
Property Number: 54200320009
Status: Excess
Comment: Correction/Republished: 7 bldgs., various sq. ft., need repair, portion occupied, restricted access, presence of asbestos/lead paint/PCBs, most recent use—warehouse/office
GSA Number: 9–G–CA–06984

Colorado

Strategic Range Tng Complex
Industrial Park
LaJunta Co: Otero CO 81050–9501
Landholding Agency: GSA
Property Number: 54200330013
Status: Surplus
Comment: main bldg. with 6 storage bldgs.
GSA Number: 7–D–CO–0648

Iowa

Fed Bldg/Courthouse
350 W 6th Street
Dubuque Co: IA 52001–
Landholding Agency: GSA
Property Number: 54200330014
Status: Excess
Comment: 45,729 sq. ft., needs repair, portion occupied, most recent use—office, historic covenants
GSA Number: 7–G–IA–0495–1

Unsuitable Properties

Buildings (by State)

Hawaii

Bldgs. 444 & 446
Pearl Harbor
Aiea Col: Honolulu HI 96701–
Landholding Agency: Navy
Property Number: 77200330058

Status: Unutilized
Reasons: Secured Areas, Extensive deterioration

Idaho

Bldg. PBF601
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330005
Status: Excess
Reason: Secured Area

Bldg. PBF606
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330006
Status: Excess
Reason: Secured Area

Bldg. PBF 626
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330007
Status: Excess
Reason: Secured Area

Bldg. PBF627
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330008
Status: Excess
Reason: Secured Area

Bldg. PBF634
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330009
Status: Excess
Reason: Secured Area

Bldg. PBF635
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330010
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho Natl Eng & Env Lab
PBF705, 717, 734, 720
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330011
Status: Excess
Reason: Secured Area

Bldg. TAN604
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330012
Status: Excess
Reason: Secured Area

Bldg. TAN606
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330013
Status: Excess
Reason: Secured Area

Bldg. TAN647
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330014
Status: Excess
Reason: Secured Area

Bldg. TAN653
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330015
Status: Excess
Reason: Secured Area

Bldg. TAN667
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200330016
Status: Excess
Reason: Secured Area

Maryland

Bldgs. 1438, 1435, 1436
Naval Air Station
Scotland Co: St. Mary's MD 20687–
Landholding Agency: Navy
Property Number: 77200330059
Status: Unutilized
Reason: Secured Area

Pennsylvania

Bldg. 567
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200330060
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Virginia

Fuel Pier CAD–B
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330061
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. C–5
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200330062
Status: Excess
Reason: Extensive deterioration

Bldg. W–6
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330063
Status: Excess
Reason: Extensive deterioration

Bldg. R–48
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330064
Status: Excess
Reason: Extensive deterioration

Bldg. R–52
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330065
Status: Excess
Reason: Extensive deterioration

Bldg. LP–69
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330066
Status: Excess
Reason: Extensive deterioration

Bldg. SP–70
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330067
Status: Excess
Reason: Extensive deterioration

Bldg. U–107
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330068
Status: Excess
Reason: Extensive deterioration

Bldg. U–120
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330069
Status: Excess
Reason: Extensive deterioration

Bldg. U–129
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330070
Status: Excess
Reason: Extensive deterioration

Bldgs. LP–178, LP–179
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200330071
Status: Excess
Reason: Extensive deterioration

Bldg. 99
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330072
Status: Excess
Reason: Secured Area

Bldg. 350
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330073
Status: Excess
Reason: Secured Area

Bldgs. 383, 384
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330074
Status: Excess
Reason: Secured Area

Bldg. 386
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330075
Status: Excess
Reason: Secured Area

Bldgs. 401, 413
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330076
Status: Excess

Reason: Secured Area

Bldg. 425
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330077
Status: Excess
Reason: Secured Area

Bldg. 491
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330078
Status: Excess
Reason: Secured Area

Bldg. 506
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330079
Status: Excess
Reason: Secured Area

Bldgs. 656, 675, 685
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330080
Status: Excess
Reason: Secured Area

Bldg. 708
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330081
Status: Excess
Reason: Secured Area

Bldg. 720
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330082
Status: Excess
Reason: Secured Area

Bldg. 723
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330083
Status: Excess
Reason: Secured Area

Bldg. 724
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330084
Status: Excess
Reason: Secured Area

Bldg. 756
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330085
Status: Excess
Reason: Secured Area

Bldg. 773
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330086
Status: Excess
Reason: Secured Area

Bldg. 793
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330087
Status: Excess
Reason: Secured Area

Bldg. 807
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330088
Status: Excess
Reason: Secured Area

Bldg. 1247
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330089
Status: Excess
Reason: Secured Area

Bldg. 1509
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330090
Status: Excess
Reason: Secured Area

Bldg. 1759
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330091
Status: Excess
Reason: Secured Area

Bldg. 1828
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330092
Status: Excess
Reason: Secured Area

Bldg. 1839
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330093
Status: Excess
Reason: Secured Area

Bldg. 1890
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330094
Status: Excess
Reason: Secured Area

Bldgs. 1891, 1892, 1898
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330095
Status: Excess
Reason: Secured Area

Bldg. 2047
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200330096
Status: Excess
Reason: Secured Area

[FR Doc. 03–24262 Filed 9–25–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee and National Invasive Species Council.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee (ISAC). The purpose of the ISAC is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of meetings on October 29–30, 2003 are to convene the full Advisory Committee (appointed by Secretary Norton on April 1, 2002); and to discuss implementation of action items outlined in the National Invasive Species Management Plan, finalized on January 18, 2001. A joint meeting of the ISAC and the National Invasive Species Council will also be held during the ISAC meeting.

DATES: Meeting of Invasive Species Advisory Committee: 9 a.m., Wednesday, October 29, 2003; and 8:30 a.m., Thursday October 30, 2003.

ADDRESSES: Wyndham Washington DC, 1400 M Street, NW., Washington, DC 20005. Meetings on both days will be held in the Monticello Ballroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Passé, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: September 16, 2003.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 03–24333 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Eastern Shore of Virginia and Fisherman Island National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Eastern Shore of Virginia and Fisherman Island National Wildlife Refuges (NWR). This Draft CCP/EA is prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969, and describes how the Service intends to manage the refuges over the next 15 years.

DATES: You must submit comments on the Draft CCP/EA by November 10, 2003. Dates and locations of the public meetings are as follows: Wednesday, October 8, 6:30–9 p.m. at The Lake Wright Quality Inn and Sleep Inn on 6280 Northampton Blvd., Norfolk, Virginia; and Thursday, October 9, 2–4 p.m. and 6:30–9 p.m. in the Northampton High School auditorium, 16041 Courthouse Road, Eastville, Virginia.

SEND YOUR COMMENTS TO: Beth Goldstein, Team Leader, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or e-mail comments to *northeastplanning@fws.gov* with the subject line stating ''Eastern Shore of Virginia and Fisherman Island NWRs.''

ADDRESSES: Copies of this Draft CCP/EA are available on compact diskette or hard copy, and may be obtained by writing: Beth Goldstein, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or e-mail requests to *northeastplanning@fws.gov.* Copies of this document may also be accessed at the website address *http://northeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Beth Goldstein, Team Leader/Regional Planner; (413) 253–8564, e-mail *Beth_Goldstein@fws.gov.*

SUPPLEMENTARY INFORMATION: This Draft CCP/EA evaluates four alternative ways of meeting refuge purposes and goals and of addressing key management issues. In addition to outlining broad management direction on conserving wildlife and their habitats, each alternative identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Alternative A describes current management on the refuges and serves as a baseline against which the other three alternatives are compared. Alternative B is the Service's Proposed Action, and Alternatives C and D are additional alternatives considered in the planning process. Public comment is being solicited on all alternatives. Based on the analysis documented in this Draft CCP/EA, the Region 5 Regional Director of the U.S. Fish and Wildlife Service (Service) will select a preferred alternative to be fully developed into a CCP for the refuges. A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq*). The purpose of developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. The CCP will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969.

The Eastern Shore of Virginia NWR consists of 1,120 acres. The refuge was created in 1984, when 180 acres were transferred to the Service from the U.S. Air Force through the General Services Administration. The refuge contains a variety of habitats, such as maritime forest, myrtle and bayberry thickets, grassland, fresh and brackish ponds, tidal salt marsh and beach. The refuge and its adjoining woodlands are regarded as one of the most important migratory bird corridors along the East Coast, comparable to the better known Cape May, New Jersey. This importance stems from the fact that the Delmarva Peninsula acts as a geographic funnel for migratory birds in the fall. It is on the Eastern Shore of Virginia NWR where millions of migratory birds rest and feed until favorable winds blow to assist them in crossing the Chesapeake Bay. The refuge was established administratively through the following general legislative authorities:

Transfer of Certain Real Property for Wildlife Conservation Purposes Act (16 U.S.C. 667b–667d): ''authorizing land to be transferred without reimbursement to the Secretary of the Department of the interior (DOI) if the land had particular value for migratory birds.''

Refuge Recreation Act (16 U.S.C. 460k–460k–4): ''authorizing acquisition of lands and interests suitable for: (1) Fish and wildlife-oriented recreation, (2) protection of natural resources, and (3) conservation of endangered or threatened species.* * *''

Migratory Bird Conservation Act (16 U.S.C. 715–715d, 715e, 715f–715r): ''Authorizing the acquisition of land ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.''

Fisherman Island NWR is the southernmost barrier island in Virginia. It is separated from the Eastern Shore of Virginia NWR by approximately a half-mile of sea called Fisherman's Inlet. Accretion continues to expand the island's size, currently estimated at 1,850 acres. The refuge was established in 1969 and transferred to DOI by 1973. Habitat succession has formed a mosaic of vegetative communities. The variety of habitats combined with the geographic location of the island, the accessibility of food, protective shrub and thicket cover, and minimal human disturbance make this island an important stopover location for migratory birds. Fisherman Island, however, is not undisturbed. The Chesapeake Bay Bridge-Tunnel (Bridge-Tunnel), which links mainland Virginia to the eastern shore, cuts through the western part of the island. Fisherman Island Refuge was established administratively through the following legislation:

Transfer of Certain Real Property for Wildlife Conservation Purposes Act (16 U.S.C. 667b–667d): ''authorizing land to be transferred without reimbursement to the Secretary of DOI if the land has particular value for migratory birds.''

Migratory Bird Conservation Act (16 U.S.C. 715–715d, 715e, 715f–715r): authorizing the acquisition of land ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.''

The following is a list of key issues and a description of how each issue was addressed across alternatives.

Wise Point boat ramp: When the United States acquired the former Wise Point property in December 2001, it inherited a private boat ramp which

provides the only access to deep water on the southern tip of the Delmarva Peninsula. The boat ramp is unsafe in its current condition and therefore was closed in June 2002 to everyone except 21 commercial watermen who were paying a commercial rate to the Wise Point Corporation, the former owners. Recreational anglers who have used the boat ramp in the past are anxious for the boat ramp to reopen. In all alternatives, the Service proposes to open the boat ramp to recreational and commercial users. In Alternative A, the Service would manage the boat ramp much as it was managed by the Wise Point Corporation. The Service would not make improvements to the boat ramp area and would allow 24-hour access for commercial watermen who apply for a special use permit. In all other alternatives, the Service would improve the parking lot and boat ramp and reserve parking spaces for commercial watermen. Over time, the Service would phase out docking, 24-hour access and reserved parking privileges for commercial watermen. Alternatives C and D propose scaling down the size of the parking lot from 75 spaces (Alternative B, the Preferred Alternative) to 35 and 25 spaces, respectively.

Firearms range: An inholding adjacent to the refuge and owned by Northampton County is home to a firearms range used for law enforcement personnel from Federal, State and County agencies. There are elevated levels of contaminants in the range area. Noise generated from firearms has the potential to conflict with the visitor experience. In all Alternatives, the Service would continue to work with partners to find an alternate, off-refuge site for the firearms range. Refuge staff would also continue to maintain the firearms range and schedule use so as not to conflict with environmental education programs. In alternatives B, C and D, the Service would also work with Northampton County to implement modern practices for firearms range management such as controlling surface runoff and leachate from the berm and periodically removing contaminated soils.

Communications tower: Verizon Virginia, Inc., owns a 299-foot communications tower on the refuge. The tower supports in-house radio communications for Verizon and refuge staff. The communications tower could cause bird strikes and the tower does not conform to current Service guidance on communications tower siting. Adjacent to the tower is a switching station that houses underground communications lines which cross the Chesapeake Bay Bridge-Tunnel and head north to Cape Charles. The lease on both the tower and the switching station expires in 2007. In all alternatives, the Service proposes not to renew the lease for the tower. Verizon would be responsible for removing the tower once the lease expires. In Alternative B, the Service would work with Verizon to assess the need for continued use of the switching station.

Land acquisition: In alternative A, the Service would continue to acquire from willing sellers the remaining 310 acres of land within Eastern Shore of Virginia NWR's current approved acquisition boundary. In Alternatives B, C, and D the Service proposes to expand the acquisition boundary to include 6,030 acres.

Dated: March 20, 2003.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 03–24344 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–03–1610–DQ]

Notice of Availability of Final Environmental Impact Statement and the Proposed Snake River Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of a Final Environmental Impact Statement (FEIS) and the Proposed Snake River Resource Management Plan (RMP), Wyoming.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) announces the availability of the FEIS and the Proposed Snake River RMP.

The FEIS describes and analyzes options for managing approximately 981 acres of public land and 15,123 acres of Federal mineral estate in Teton County, northwestern Wyoming. The FEIS documents the direct, indirect, and cumulative environmental impacts of six management alternatives for BLM-administered public lands near, or adjacent to, the Snake River. The completed RMP will fulfill the obligations set forth by the NEPA, Federal Land Policy and Management Act (FLPMA), and Federal regulations.

DATES: The Proposed Snake River RMP and FEIS will be available for review for 30 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. Under the provisions of 43 Code of Federal Regulations (CFR) 1610.5 protest of a proposed BLM RMP must be filed with the Director in accordance with the instructions described in the FEIS and included in the supplemental information section of this notice. Protest of the proposed Snake River RMP will be accepted no later than 30 calendar days from the date the EPA publishes its NOA in the **Federal Register**.

ADDRESSES: A copy of the FEIS has been sent to affected Federal, State, local government agencies, and to interested parties. The document will be available electronically on the following Web site: *http://www.wy.blm.gov/srrmp/index.htm.* Copies of the FEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009
- Bureau of Land Management, Pinedale Field Office, 432 S. Mill St., Pinedale, Wyoming 82941

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kellie Roadifer, Project Manager, BLM Pinedale Field Office, 432 S. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or electronically to *pinedale wymail@blm.gov* with ''Attention: Snake River RMP'' in the subject line. Ms. Roadifer may also be reached at (307) 367–5309.

SUPPLEMENTARY INFORMATION: The BLM-administered public lands and mineral estate in the planning area currently do not have an approved land use plan. Upon approval, the Snake River RMP would establish management direction for the surface and mineral estates and associated resources administered by the BLM near Jackson, Wyoming. The public lands and Federal mineral resources analyzed are those administered by the BLM Pinedale Field Office.

The FEIS describes the physical, biological, cultural, historic, and socioeconomic resources in and around the surrounding planning area. The focus for impact analysis was based on resource issues and concerns identified during scoping and public involvement activities and opportunities. Potential impacts of concern regarding possible management direction and planning decisions (not in priority order) are: multi-agency and interagency cooperative management; recreation opportunities along the Snake River;

availability and development of construction mineral materials; and land ownership (land tenure) pattern. The primary issues driving alternative development are: mineral development; visitor health and safety; recreation management; wildlife habitat; open space; land use authorizations; and land tenure adjustment.

Six alternatives were analyzed in detail:

1. Alternative A, Continuation of Existing Management Direction or the ''No Action'' Alternative;
2. Alternative B, Reduced Land Use Restrictions with Higher Levels of Mineral Development and Recreation;
3. Alternative C, Continuation of Existing Management Direction with Reduced Motor Vehicle Access, Increased Wildlife Habitat Protection and Solitude Opportunities, and Possible Consolidation of Public Land Parcels;
4. Alternative D, Disposal of Lands Currently Administered by the BLM;
5. Alternative E, Limited Disposal or Exchange of Lands Currently Administered by the BLM, and
6. Proposed Plan, Transfer of Public Land Parcels To Another Federal Land Management Agency or Disposal of Public Land to Other Governmental Entities With Conveyance Contingent on Continuation of RMP Management Direction.

Background information and maps used in developing the final RMP EIS are available for public viewing at the Pinedale Field Office.

If adopted, this proposed RMP does not authorize any land uses or site-disturbing activities. Decisions regarding these site-specific implementation activities are subject to further NEPA analysis and appeal, as provided by applicable regulations.

Protest Instructions: Publication of this EIS prepared for a RMP affords the public the opportunity to protest. Instructions for filing a protest with the Director of the BLM regarding the State Director's proposed Snake River RMP may be found at 43 CFR 1610.5. Any person who participated in the planning process, has an interest, or may be adversely affected by the approval of the proposed RMP, may protest such approval. The protest must be in writing and must be filed with the Director. The protest must be filed within 30 days from the date the EPA publishes its NOA in the **Federal Register**. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;

ii. A statement of the issue or issues being protested;

iii. A statement of the part, or parts, of the plan or amendment being protested;

iv. A copy of all documents addressing the issue, or issues, that were submitted during the planning process by the protesting party or an indication of the date the issue, or issues, were discussed for the record; and

v. A concise statement explaining why the State Director's decision is believed to be wrong.

E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*

The Director will respond to protests. The response will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director will be the final decision for the Department of the Interior.

Protest Filing Addresses: Protests submitted electronically will not be accepted. File written protests by Surface Mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Ms. Brenda Williams, Protest Coordinator, P.O. Box 66538, Washington DC 20035 or overnight (WO–210), 1620 L Street, NW., Room 1075, Washington, DC 20036.

Alan Kesterke,

Associate State Director.

[FR Doc. 03–24154 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1220–AD]

Notice of Closure of Public Lands

AGENCY: Bureau of Land Management, Billings Field Office, Montana State Office.

ACTION: ''Notice of Extension of Emergency Closure of Firearms Target Shooting for One Year on Certain Public Lands Administered by the Bureau of Land Management in Yellowstone County, Montana.''

SUMMARY: Notice is hereby given that certain areas are closed to firearms target shooting from October 1st, 2003 to September 30th, 2004, to protect public safety and natural resources. The closed areas are Shepherd Ah-Nei, 21-Mile, and Acton Ah-Nei areas and are legally described as:

That area of public lands commonly referred to the ''Shepherd Area,'' or ''Shepherd Ah Nei'' located at:

T 4 N, R 27 E,
Sec. 24, NE¼, S½;
Sec. 25, all.
Sec. 36, all.
T 3 N, R 27 E,
Sec. 1, all.
T 4 N, R 28 E,
Sec. 19, all.
Sec. 20, W½.
Sec. 30, Lots 1, 2, N½NE¼.
Sec. 31, all
T 3 N, R 28 E,
Sec. 6, Lots 3, 4, 7, 8, 9, 10, 11, 12, E½, Principal Montana Meridian, and

That area of public lands commonly referred to the ''21-Mile Area ''located north of Billings and west of the Roundup Road, Highway 87 North and the 21 Mile Road at:

T 4 N, R 25 E,
Sec. 24, all. Principal Montana Meridian, and

That area of public lands commonly referred to as the ''Acton Area'' or ''Acton Ah-Nei'' located east of Broadview, Montana at:

T 4 N, R 25 E,
Sec. 31, E½.
T 3 N, R 25 E,
Sec. 5, all.
Sec. 6, Lots 1, 2, S½, NE¼;
Sec. 7, Lots 1, 2, E½ NW¼, E½ SW¼, E½;
Sec. 8, all.
Sec. 9, all.
Sec. 17, all.
Sec. 20, N½ N½. Principal Montana Meridian, all in Yellowstone County, in the State of Montana.

Closure signs will be posted at the major entry points to this area. Maps of the closure and information may be obtained from the Billings Field Office.

DATES: This Closure will be in effect from October 1st, 2003 to September 30, 2004, unless superceded by permanent rulemaking action.

FOR FURTHER INFORMATION CONTACT: Sandra S. Brooks, Field Manager, BLM, Billings Field Office, P.O. Box 36800, 5001 Southgate Drive, Billings, MT 50107–6800 or call 406–896–5013.

Discussion of the Emergency Closure: This extension of the emergency closure is necessary for the management of actions, activities, and public use on certain public lands which may have, or are having, adverse impacts on persons using public lands, on property, and on resources located on public lands until permanent management action can be taken. The Billings Field Office, in conjunction with the Resource Advisory

Committee will host a working group of interested members of the public to resolve the issues of resource damage and conflicts with other users.

While hikers, horseback riders, mountain bicyclists and other users can schedule their use around published hunting seasons for safety reasons; they are not able to avoid random target shooting. Local conditions including heavy timber and rough terrain reduce visibility and increase the hazard to other users from target shooters. As a result recent incidents involving random target shooting have resulted in endangerment and injury to other users. In addition, resource damage is occurring from the accumulation of debris from target materials. To reduce the incidence of future conflicts, three areas of public land known as the Acton Area, 21-Mile Area, and Shepherd Ah-Nei, located north of Billings, Montana are being closed to target shooting with firearms. These areas will remain open to hunting by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

This Emergency Closure does not apply to other lands, specifically the ''17-Mile'' area located west of Highway 87, north of Billings, Montana, on the Crooked Creek Road.

SUPPLEMENTARY INFORMATION: Under the authority of 43 CFR 9268.3 (d)(1)(i) and 43 CFR 8364.1(a) the Bureau of Land Management will enforce the following Emergency Closure on public lands within the closed area.

Emergency Closure

1.0 Emergency Closure of Certain Public Lands to Target Shooting.

The following is prohibited:

The discharge of firearms for the purpose of target shooting.

(2.0) Exceptions:

(a) This regulation does not apply to the hunting of lawful game by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

(b) This regulation does not apply to archery marksmanship at fixed targets affixed to a backstop sufficient to stop and hold target or broad-head arrows or the use of compressed gas paintball projectors.

(c) This regulation does not apply to special target shooting events, which may be authorized by the authorized officer under special permit.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a) and 43 CFR 9268.3(e)(2), 43 CFR 8360.0–7, and 43 CFR 8365.1–6). Violations of this regulation are punishable by a fine in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*), and/or imprisonment not to exceed 12 months for each offense.

Dated: September 18, 2003.

Sandra S. Brooks,

Field Office Manager, Billings Field Office.

[FR Doc. 03–24340 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Final)]

Barium Carbonate 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 barium carbonate, provided for in subheading 2836.60.00 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 September 30, 2002, following receipt of a petition filed with the Commission and Commerce by Chemical Products Corporation, Cartersville, GA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of barium carbonate 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 April 16, 2003 (68 FR 18670). The hearing was held in Washington, DC, on July 31, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 19, 2003. The views of the Commission are contained in USITC Publication 3631 (September 2003) entitled *Barium Carbonate from China: Investigation No. 731–TA–1020 (Final).*

By order of the Commission.

Issued: September 22, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–24338 Filed 9–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Final)]

Certain Ceramic Station Post Insulators from Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: September 17, 2003.

FOR FURTHER INFORMATION CONTACT: John Cutchin (202–205–3396), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On July 21, 2003, the Commission established a schedule for the conduct of the final phase of the subject investigation (68 FR 43162). The Commission is changing its hearing date and subsequently revising its schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 20, 2003; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 23, 2003; the prehearing staff report will be placed in the nonpublic record on October 15, 2003; the deadline for filing prehearing briefs is

October 22, 2003; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 29, 2003; and the deadline for filing posthearing briefs and written statements is November 5, 2003.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 22, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–24337 Filed 9–25–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Council on Problem Gambling, Inc., Civil Action No. 1:03CV01278; Public Comments and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States hereby publishes below the written comments on the proposed Final Judgment in *United States of America* v. *National Council on Problem Gambling, Inc.,* Civil Action No. 1:03CV01278 filed in the United States District Court for the District of Columbia, together with the United States' response to the comments. Copies of the comments and the United States' response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 200, Washington, DC 20530, and at the Office of the Clerk for the United States District Court for the District of Columbia, E. Barrett Prettyman Building, 333 Constitution Ave. NW., Washington, DC 20001.

J. Robert Kramer,

Director of Operations, Antitrust Division.

Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comments received regarding the Proposed Final Judgment in this case.

I. Background

On June 13, 2003, the United States filed a Complaint alleging that the National Council on Problem Gambling, Inc. (''NCPG'') had orchestrated an unlawful territorial allocation of problem gambling products and services along state lines in violation of section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement (''CIS'') was also filed with the Court at that time, and published in the **Federal Register**, along with the Proposed Final Judgment, on June 26, 2003 (*see* 68 FR 38093). Pursuant to 15 U.S.C. 16(c), a summary of the terms of the Proposed Final Judgment and CIS was published in *The Washington Post,* a newspaper of general circulation in the District of Columbia, during the period of June 24 through 30, 2003.

Under the consent order, NCPG is prohibited from directly or indirectly initiating, adopting, or pursuing any agreement, program, or policy that has the purpose or effect of prohibiting or restraining any Problem Gambling Service Provider (''PGSP'') from: (1) Selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer. The NCPG is also prohibited from directly or indirectly adopting, disseminating, publishing, seeking adherence to or facilitating any agreement, code of ethics, rule, bylaw, resolution, policy, guideline, standard, certification, or statement made or ratified by an official that has the purpose or effect of prohibiting or restraining any PGSP from engaging in any of the above practices, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to the policy of the NCPG.

The consent order further provides that the NCPG is prohibited from adopting or enforcing any standard or policy that has the purpose or effect of: (1) Requiring that any PGSP obtain permission from, inform, or otherwise consult with another PGSP before selling problem gambling services or submitting bids for the provision of problem gambling services in any state or territory or to any customer; or (2) requiring that any PGSP contract with, provide a fee or a portion of revenues to, or otherwise remunerate any other PGSP as a result of selling problem gambling services in any state or territory or to any customer. Finally, the NCPG is prohibited from adopting or enforcing any standard or policy or taking any action that has the purpose or effect of: (1) Sanctioning, penalizing or otherwise retaliating against any PGSP for competing with any other PGSP; or (2) creating or facitating an agreement not to compete between two or more PGSPs.

The sixty-day period for public comments expired on August 29, 2003. As of today, the United States has received written comments from: (1) Joseph E. Finnerty, James A. Gentry, Fred Gottheil, and John Warren Kindt of the Gambling Research Group (''Gambling Research Group''); (2) Kathleen M. Scanlan, Executive Director of the Massachusetts Council on Compulsive Gambling, Ind., (''Massachusetts Council''); and (3) Richard A. Johnson, CEO, and Glen Gorelick, Director, of Problemgambling.com, Responsiblegaming.com, and Safegamingsystem.com (''Problemgambling.com''). The United States has carefully considered the views expressed in these comments, but nothing in the comments has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is now filing with this Court its response to such comments. Once these comments and this response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

II. Response to Public Comments

A. Gambling Research Group's Comment

The Gambling Research Group asserts that ''a majority of experts would probably argue that this entire market [for services to pathological and problem gamblers] is currently dominated by problem gambling service providers (PGSPs) who are involved in direct or indirect vertical relationships [with Gambling Related Organizations (''GROs'')] resulting in those PGSPs being dominated or substantially influenced by various GROs.'' The comment asserts that control of the PGSPs by GROs may result in less effective services to pathological and problem gamblers because GROs benefit financially from the excessive wagering of these troubled gamblers. Thus, the Gambling Research Group recommends that the NCPG be required to reveal all donations and influences impacting upon its financial viability and to divest itself from all direct and indirect

associations and vertical and horizontal influences from GROs. (A copy of the Gambling Research Group's comment is attached as Exhibit A.)

The Proposed Final Judgment addresses the violation alleged in the Complaint—an unlawful territorial allocation of problem gambling products and services along state lines in violation of Section One of the Sherman Act. While the Gambling Research Group's comment raises interesting issues, it does not address the violation alleged in the Complaint. Nothing in the Gambling Research Group's comment changes the view of the United States that the Proposed Final Judgment is in the public interest. In making its determination whether the Proposed Final Judgment is ''in the public interest,'' the ''court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.' '' *United States* v. *Microsoft Corp.,* 231 F. Supp. 2d 144, 154 (D.D.C. 2002) (quoting *United States* v. *Microsoft Corp.,* 56 F. 3d 1448, 1459 (D.D.C. 1995)).

B. Massachusetts Council's Comment

The Massachusetts Council's comment does not state whether it supports or opposes entry of the Proposed Final Judgment. Rather, the comment cites various instances in which the Massachusetts Council—as a member of NCPG—and others, spoke out against or disagreed with NCPG's policy of territorial allocation of problem gambling products and services along state lines. (A copy of the Massachusetts Council's comment is attached as Exhibit B.) The NCPG's policy of territorial allocation is the issue squarely addressed by the Complaint and the Proposed Final Judgment. Given the Massachusetts Council's stated disagreement with the NCPG's policy of territorial allocation, the United States views this comment as one in support of the entry of the Proposed Final Judgment.

C. Problemgambling.com's Comment

Two executives of Problemgambling.com stated that they support the Proposed Final Judgment and it is in the public interest. (A copy of Problemgambling.com's comment is attached as Exhibit C.)

III. Conclusion

After careful consideration of these pubic comments, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Pursuant to section 16(d) of the APPA, the United Sates is submitting these public comments and this response to the **Federal Register** for publication. After these comments and this response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated: _____

Washington, D.C.

Respectfully submitted,

/s/ _____

Rosemary Simota Thompson,
IL Bar #6204990, United States Department of Justice, Antitrust Division, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530 (telephone), (312) 353–4136 (facsimile), Rosemary.Thompson@usdoj.gov.

Certificate of Service

I hereby certify that I served a copy of the foregoing Response to Public Comments via First Class United States Mail, this __ day of _____, 2003, on:

Sanford M. Saunders, Jr., Esq., Greenberg Traurig, LP, 800 Connecticut Avenue, NW., Suite 500, Washington, DC 20006.

/s/ _____

Rosemary Simota Thompson,
Attorney, Chicago Field Office, U.S. Department of Justice, Antitrust Division, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604, (312) 353–7530 (telephone).

EXHIBIT A

Gambling Research Group
P.O. Box 70
Savoy, IL 61874

August 21, 2003

Marvin N. Price, Jr., Chief
Field Office
Chicago U.S. Department of Justice, Antitrust Division
209 S. LaSalle St., Suite 600
Chicago, IL 60604

RE: *U.S.* v. *Nat'l Coun. Problem Gambling, Inc.*

Dear Mr. Price: This comment is made pursuant to 68 *Fed. Reg.* 38090–98 (June 26, 2003). If the gambling industry, its affiliates, associates, or related service industries (hereinafter gambling related organizations: GROs) can control, dominate, or substantially influence the expertise and policies at the only national organization (such as the National Council on Problem Gambling: NCPG) or cluster of organizations dealing with pathological and problem gambling (Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders,* Sec. 312.31 ''Pathological Gambling''), the GROs can control, dominate, or substantially influence both horizontal and vertical relationships regarding the expertise and policies relating to nomenclature, terminology, standards, markets, and even market shares. For example, they have ostensibly supported the introduction of new terms, such as ''disordered gambling'' that have had the effect of obfuscating issues and market segments.

Two prime relevant markets consist of the provision of services to the pathological (*i.e.,* compulsive) gambler market segment and the problem gambler market segment. (These market segments are delimited in the next paragraph). As indicated in 68 *Fed. Reg.* 38090 *et seq.,* a majority of experts would probably argue that this entire market is currently dominated by problem gambling service providers (PGSPs) who are involved in direct or indirect vertical relationships resulting in those PGSPs being dominated or substantially influenced by various GROs. The conflict of interest is that theoretically GROs would not want to have the most effective or efficient PGSP programs for pathological and problem gamblers since those gamblers constitute crème market segments. The analogy is to *United States* v. *Motor Vehicles Manufacturing Ass'n,* No. CV 69–75–JWC (D.C., Central Dist. Calif.), 1982 U.S. Dist. LEXIS 17850; Trade Cas. (CCH) P65, 175, Oct. 28, 1982 which resulted in a consent decree prohibiting major auto manufacturers from combining to research pollution control devices. The theory in *Motor Ass'n* is that they all have incentives to repress innovation in this area.

All of these determinations also impact on the identification of market segments and abilities to attract or market to those segments—if any GRO should desire to do so. For example, the crème market for gambling revenues apparently consists of the pathological (*i.e.,* compulsive) gambler market segment (approximately 1–2 percent of the general population) and the problem gambler market segment (approximately 3–5 percent of the general population). These two segments account for between 10–74 percent of the total dollars lost in all geographic gambling markets. (Lesieur, 1998). As indicated in the *Final Report* of the 1999 National Gambling Impact Study Commission (*e.g.,* page 4–4), these market segments are more concentrated near gambling venues. The percentages of these markets and their percentages of total dollars lost to the different types of gambling were first categorized during the 1996 annual meeting of the National Council on Problem Gambling (NCPG) and were subsequently published as a table in: Henry R. Lesieur, *Costs and Treatment of Pathological Gambling,* 556 Annals Am. Acad. Pol. & Sci. 153, 165 Table 1 (1998) (Table 1: ''Percentage of Expenditures by Problem Gamblers for Selected Forms of Gambling by State or Province''). (*See also* Australian Productivity Commission 1999; Focal Research (1998); 1997/1998 *Nova Scotia lottery players survey.*)

Thus, if the GROs can control, dominate, or substantially influence the financial viability of the NCPG, the GROs almost necessarily control, dominate, or substantially influence the expertise and policies relating to nomenclature, terminology, standards, markets, and even market shares among segments of gamblers, as well as the problem gambling services providers (PGSPs) which service segments of those markets.

Accordingly, the NCPG should be required to reveal all donations and influences impacting upon the financial viability of the

NCPG for the last ten years and divest itself from all direct and indirect associations and vertical and horizontal influences from GROs both now and in the future.

In this regard, any direct or indirect interlocking relationships, both vertical and horizontal, between the NCPG and other organizations do not appear to be fully discovered, explored, or addressed. The NCPG and state PGSPs should be compelled to divest themselves of any such relationships from which GROs could obtain quasi-public or inside marketing advantage information.

Sincerely,

Joseph E. Finnerty
James A. Gentry
Fred Gottheil
John Warren Kindt

Massachusetts Council on Compulsive Gambling

August 11, 2003

Marvin N. Price, Jr., Chief
Chicago Field Office
U.S. Department of Justice
Antitrust Division
209 S. LaSalle St., Suite 600
Chicago, Illinois 60604

Dear Mr. Price: In regard to the Civil Action No. 1–03CV01278, United States v. National Council on Problem Gambling, the Massachusetts Council on Compulsive Gambling is taking the opportunity to comment on the Complaint, proposed Final Judgement, Stipulation, and Competitive Impact Statement filed on June 13, 2003.

These documents refer to ''the NCPG acting illegally to curtail competition by establishing territorial allocation.'' They also describe the state affiliates agreeing with the NCPG on these policies.

The Massachusetts Council on Compulsive Gambling would like to call to your attention that it consistently during the 1995–2001 period argued against territorial allocation, disagreed with proposed policies related to it, voted against these policies, and in August 2000 submitted a written refusal to sign a proposed affiliate agreement, in part, due to this issue.

Also, during that time period, the NCPG requested that the Director of the Harvard Medical School, Division on Addictions conduct a study designed to find facts land make recommendations regarding the issue. The Massachusetts Council on Compulsive Gambling participated by providing interviews and again spoke against territorial allocation. The final document provided to NACPG by Harvard Medical School recommended against territorial allocation of problem gambling services.

The documents also refer to a complaint of the Arizona Council against the Minnesota Council for a successful bid on a contract with the Arizona Lottery that resulted in a hearing for both parties to present their cases to a committee of the NCPG. The Massachusetts Council on Compulsive Gambling was selected to participate as a committee member. The committee was charged with presenting a finding and making recommendations to the NCPG. Again, the final report recommended against territorial allocation of problem gambling services.

EXHIBIT B

The Massachusetts Council on Compulsive Gambling brings this information to your attention in order to persuade you that state affiliates were not necessarily in agreement with NCPG policies related to territorial allocation of problem gambling services. The Massachusetts Council on Compulsive Gambling would like to go on record as having opposed these policies since they surfaced and having actively worked to eliminate them.

Thank you for your attention to this.

Sincerely,

Kathleen M. Scanlan
Executive Director

EXHIBIT C

Richard A. Johnson, CEO
Problem gambling.com,
Responsiblegaming.com,
Safegamingsystem.com,
10443 Noontide Avenue
Las Vegas, Nevada 89135
(702) 562–0232

Marvin N. Price, Jr.
Chief, Chicago Field Office,
Anti Trust Division,
Department of Justice,
209 S. LaSalle Street, Suite 600,
Chicago, Illinois 60604

August 1, 2003

Re: Civil Action No. 1:03CV01278, United States of America vs The National Council on Problem Gambling, Inc., Comments on Proposed Judgment

Dear Mr. Price, We respectfully attach our comments dated July 24, 2003 to the proposed judgment dated June 13, 2003 in the aforesaid action.

Naturally if you have any questions, please feel free to call.

Sincerely,

Richard A. Johnson

cc: Rosemary Simota Thompson

Comments

Pursuant to the Notice dated June 26, 2003 given according to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) –(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in the United States of America v. National Council on Problem Gambling, Inc. and in which said notice requested public comment within (60) days of said notice, the following response is hereby submitted:

1. The proposed settlement appears to render fair and unhindered competition among those ''persons'' interested in promoting ''problem gambling services'' as defined in Section II (Definitions) of the Final Judgment dated June 13, 2003.

Moreover, the aforesaid document appears to be clear that ''problem gambling service providers'' are free to do business anywhere in the United States without interference from the National Council on Problem Gambling, Inc. or any of its state affiliates, including but not limited to Arizona, California, Connecticut, Florida, Louisiana, Massachusetts, Minnesota, New York and Nevada. Said conduct appears to be set forth in section IV, entitled, *Prohibited Conduct* of the Final Judgment.

As such, the undersigned support the proposed final judgment between the United States of America and the National Council on Problem Gambling, Inc. and its state affiliates. The agreement appears to be in the best public interest. It promotes fair business practices and assures a competitive process. As a problem gambling service provider (''PGSP''), we feel that it opens the door to a more creative environment wherein the future development and application of responsible gaming and problem gambling products and services will be enhanced. As a result, any damage to our social system due to increased availability of gambling can be mitigated.

Richard A. Johnson,
CEO, Problemgambling.com., Responsiblegambling.com., Safegamingsystem.com, 10443 Noontide Avenue, Las Vegas, Nevada 89135, (702) 562–0232.

Glenn Gorelick,
Director, Problemgambling.com, Responsiblegaming.com, Safegamingsystem.com, 89 Cranbury Drive, Trumbull, Connecticut 06611, (203) 268–0292.

[FR Doc. 03–24311 Filed 9–25–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Internet Streaming Media Alliance, Inc.

Notice is hereby given that, on September 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Internet Streaming Media Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Analog Devices, Inc., Norwood, MA; AOL Time Warner, Inc., New York, NY; BitBand Technologies Ltd, Tel Aviv, Israel; Coding Technologies, Nuremberg, Germany; Content Guard, Bethesda, MD; Dolby Laboratories Inc., San Francisco, CA; Envivio, San Francisco, CA; France Telecom, Cesson Sevigne, France;

Fraunhofer Institute for Integrated Circuits, Erlangen, Germany; Hitachi, Kawasaki, Japan; iVast, Inc., Santa Clara, CA; Matsushita Electric Industrial, Kadoma City, Japan; Nagra Vision, Cheseaux, Switzerland; National Semiconductor Corporation, Longmont, CO; NDS Technologies, Jerusalem, Israel; NeoMagic Corporation, Santa Clara, CA; net&tv, Seoul, Republic of Korea; Network Appliance, Sunnyvale, CA; Nextreaming, Seoul, Republic of Korea; Oki Electric Industry Co. Ltd., Tokyo, Japan; On2 Technologies, New York, NY; OPTIBASE Ltd., Herzliya, Israel; Philips Electronics, Sunnyvale, CA; Sharp Laboratories of America, Inc., Camas, WA; Sony Corporation, Tokyo, Japan; Standby Program, New York, NY; Sun Microsystems, Palo Alto, CA; Telecom Italia Lab, Torino, Italy; Thomson, Boulogne, France; University of Washington, Seattle, WA; Vbrick Systems, Inc., Wallingford, CT; and Volera, San Jose, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Internet Streaming Media Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On March 8, 2001, Internet Streaming Media Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 20, 2001 (66 FR 20334).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–24310 Filed 9–25–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Mobile Alliance

Notice is hereby given that, on July 7, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Mobile Alliance (''OMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anritsu Ltd., Luton, United Kingdom; ArcSoft Inc., Fremont, CA; Bitfone Corporation, Laguna Niguel, CA; Chaoticom, Inc., Hampton Falls, NH; Computer Associates, Islandia, NY; E28 (Shanghai) Ltd., Shanghai, People's Republic of China; esmertec AG, Duebendorf, Switzerland; Future Space S.A., Madrid, Spain; Green Cathedral plc, Cambridge, United Kingdom; iaSolution Inc., Taipei, Taiwan; In-Fusio, Bordeaux, France; Incomit AB, Karlstad, Sweden; Insignia Solutions, Fremont, CA; Intrado, Longmont, CO; Maptel Networks, S.A.U., Madrid, Spain; MediaTek Inc., Hsin-Chu City, Taiwan; mformation Technologies Inc., Edison, NJ; Mobile-Mind, Inc., Watertown, MA; Mobixell Networks Ltd., Ra'anana, Israel; Nextreaming Corporation, Seoul, Republic of Korea; NTT DATA Corporation, Tokyo, Japan; Oksijen Teknoloji, Bakirkoy-Istanbul, Turkey; PacketVideo Corp, San Diego, CA; ParthusCeva, Inc., San Jose, CA; Partner Communications Company Ltd., Rosh Ha'ayin, Israel; Plastixense AB, Malmo, Sweden; Promotion Office for Wireless Communication Department of Industrial Technology, Taipei, Taiwan; Ruksun Software Technologies Pvt. Ltd., Pune, India; SafeNet, Inc., Baltimore, MD; Sarnoff Corporation, Princeton, NJ; SDR Forum, New Hartford, NY; Smart Fusion SAS, Mougins Cedex, France; Synergenix Interactive AB, Solna, Sweden; VerdiSoft Corporation, Palo Alto, CA; Vilkas Ltd., Lugano, Switzerland; Virgin Mobile, Trowbridge, United Kingdom; VoiceAge Corporation, Montreal, Quebec, Canada; and WiderThan.com, Seoul, Republic of Korea have been added as parties to this venture. Teleca Software Solutions is now called Teleca Mobile Technologies, Lund, Sweden; and Viair, Inc. is now called Visto Corporation, Seattle, WA.

The following companies had their memberships canceled: Digital Bridges, LTD, Dunfermline, United Kingdom; and Mobilesys Inc., Mountain View, CA.

The following company has resigned: Ad Vitam, Pont-Du-Chateau, France.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on April 7, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26648).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–24309 Filed 9–25–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on August 25, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the membership held by Bayer Corporation, Pittsburgh, PA has been transferred to Bayer CropScience LP, Research Triangle Park, NC; and the membership formerly held by Cedar Chemical Corporation, Memphis, TN, but acquired by Mahkeshim-Agan, N.A., New York, NY in bankruptcy, was transferred to LG Life Sciences, Ltd., Seoul, Republic of Korea.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on March 3, 2003. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on April 4, 2003 (68 FR 16553).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–24308 Filed 9–25–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers valued-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: Signed at Washington, DC, this 22nd Day of September 2003.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–24297 Filed 9–25–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Design section (Challenge America-Access and Heritage/Preservation categories) will be held on October 15–16, 2003 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 11:45 a.m. to 12:45 p.m. on October 16th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on October 15th, and from 9 a.m. to 11:45 a.m. and 12:45 p.m. to 2:30 p.m. on October 16th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: September 22, 2003.

Sherry Hale,

Staff Assistant, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–24434 Filed 9–25–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Media Arts section (Challenge America-Access and Heritage/Preservation categories), will be held on October 9–10, 2003 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. This meeting will be held from 9 a.m. to 6 p.m. on October 9th and from 9 a.m. to 5:30 p.m. on October 10th.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: September 22, 2003.

Sherry Hale,

Staff Assistant, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–24457 Filed 9–25–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Sunshine Act Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

NAME: Proposal Review Panel for Materials Research (1203).

DATES AND TIMES: October 8, 2003—8 am–11 pm;, October 9, 2003—8 am–11 pm; October 10, 2003—8 am–1:30 pm.

PLACE: National High Magnetic Field Laboratory (NHMFL), Florida State University, Tallahassee, FL.

TYPE OF MEETING: Part-open.

CONTACT PERSON: Dr. Hugh Van Horn, Director, National Facilities, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4920, e-mail: *hvanhorn@nsf.gov*

PURPOSE OF MEETING: To provide advice and recommendations concerning progress of the National High Magnetic Field Laboratory located at Florida State University, the University of Florida, and Los Alamos National Laboratory.

AGENDA:

Wednesday, October 8

8a–8:45a—Closed—Executive Session

8:50a–2p—Open—Subcommittee review of 900 MHz Magnet System

2p–11p—Closed—Executive Session, review and drafting of report

Thursday, October 9

8a–8:30a—Closed—Executive Session

8:30a–12n—Open—Overview of NHMFL

Review of User Programs

Review of Magnetic Resonances User Programs

Magnet Science & Technology Programs and Goals

12:00n–1p—Closed—Executive Session

1p–6:30p—Open—Educational Outreach & Public Awareness

Vision and Goals

Tour of NHMFL

Post Session

6:30p–11 p—Closed—Executive Session, review and drafting of report

Friday, October 10

Closed—Meetings with Institutional Representatives

Review and prepare site visit report

Reason for Late Notice: Due to unexpected delays and complications with the administrative processes.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 24, 2003.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 03–24529 Filed 9–24–03; 12:23 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Entergy Nuclear Operations, Inc. (ENO or the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2 (IP2), located in Westchester County, New York.

The proposed amendment, requested by ENO in a letter dated March 27, 2002, as supplemented by letters dated May 30, 2002, July 10, 2002, October 10, 2002, October 28, 2002, November 26, 2002, December 18, 2002, January 6, 2003, January 27, 2003, February 26, 2003, April 8, 2003, May 19, 2003, June 23, 2003, June 26, 2003, July 15, 2003, August 6, 2003, and September 11, 2003, represents a full conversion from the Current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications (STS) for Westinghouse Plants,'' Revision 2, dated April 2001. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22,1993 (58 FR 39132), to the CTS and using NUREG–1431 as a basis, proposed an ITS for IP2. The criteria in the Final Policy Statement was subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the CTS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in the attachment of the licensee's March 26, 2002, submittal, which is entitled, ''Application of NRC Selection Criteria, Including the CTS to ITS Disposition and Relocation Matrix'' (Split Report) in Volume 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively controlled documents such as the quality assurance program, the final safety analysis report (FSAR), the ITS Bases, the Technical Requirements Manual that is incorporated by reference in the FSAR, the Core Operating Limits Report, the Offsite Dose Calculation Manual, the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the STS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the NRC staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different from the requirements in both the CTS and the STS NUREG–1431. These beyond scope issues to the

conversion, listed in the order of the applicable ITS specification or section, as appropriate (from ITS 3.6.9 to ITS 3.8.7) are as follows:

1. The licensee added ITS Limiting Condition for Operation (LCO) 3.6.9—Isolation Valve Seal Water System to the proposed IP2 ITS. NUREG–1431 does not include an STS for this system, because very few plants have this kind of system. The CTS provides a base set of requirements which the staff will use to evaluate the licensee's proposed change for parameters such as allowable out-of-service time and surveillance requirements.

2. The licensee added ITS LCO 3.6.10—Weld Channel and Penetration Pressurization System (WC&PPS) to the proposed IP2 ITS. The WC&PPS is designed to continuously pressurize the space between selected containment isolation valves, containment piping penetration barriers, and most of the weld seam channels installed on the inside of the containment liner. Pressurization by the WC&PPS provides a means of monitoring the containment leakage of the affected barriers. WC&PPS pressure is maintained above P_a[atmospheric pressure], so the system may also reduce out leakage from the containment during an accident, although it is not credited for doing so. There are no regulatory requirements or guidance for this system. NUREG–1431 does not include an STS for this system, because very few plants have this kind of system.

3. The licensee added ITS 3.7.2—Main Steam Isolation Valves (MSIVs) and Main Steam Check Valves (MSCVs) to the proposed IP2 ITS. CTS 3.4B allows all 4 MSIVs to be inoperable for up to 72 hours prior to requiring initiation of plant shutdown. The proposed ITS LCO 3.7.2, required action C.1, allows only one MSIV to be inoperable for up to 72 hours prior to requiring initiation of a plant shutdown. If more than one MSIV is inoperable in Mode 1 (and not closed); ITS LCO 3.03 is immediately applicable and a plant shutdown must be initiated within 1 hour. Proposed ITS 3.7.2 deviates from STS 3.7.2 which allows all 4 MSIVs to be inoperable for up to 72 hours prior to requiring initiation of plant shutdown.

4. The licensee proposed ITS LCO 3.7.3 for Main Feedwater Isolation to add requirement for operability, allowable out of service times and surveillance requirements (SR) which are deviations from the Scope of STS conversion.

5. The licensee proposed ITS LCO 3.7.8 of 72 hours allowed out of service time which is less restrictive (*i.e.*, longer) than the STS allowed out of service time of 12 hours, without adopting NUREG–1431, STS LCO 3.7.8 Notes 1 and 2, for the service water pumps.

6. The licensee proposed ITS LCO 3.8.1 to replace the current CTS 3.7 and requires that onsite and offsite electrical power systems are operable in Modes 1, 2, 3, and 4. Current requirements of CTS 3.7 specify that requirements for onsite and offsite electrical power systems are applicable only when the reactor is critical and, therefore requires only that the reactor be made subcritical when requirements are not met. CTS 4.6 do not establish any requirements for the periodic verification of correct breaker alignment and indicated power availability for offsite circuits.

7. The licensee proposed the following SRs for ITS LCO 3.8.3—Diesel Fuel Oil and Starting Air:

(a) ITS SR 3.8.3.1 requirement for verification regarding the emergency diesel generator fuel oil inventory in the fuel oil storage tanks is relaxed.

(b) Proposed ITS does not adopt STS SR 3.8.3.2 requirement for verification regarding the lube oil inventory; and

(c) The licensee added new sections to specify a range of pressure limits and impose LCOs and SRs for the starting air receivers. CTS does not currently have these requirements.

8. The licensee proposed ITS LCO 3.8.4, ''DC Sources—Operating'' and associated ITS SR 3.8.4 which are less restrictive than CTS 3.7.B.5 and CTS 3.7.B.6. CTS 3.7.B.5 and CTS 3.7.B.6 allow one of the four batteries to be inoperable for 24 hours if the associated charger is operable or allow one of the four chargers to be inoperable for 24 hours if the associated battery is operable.

9. The licensee originally proposed ITS LCO 3.8.6 which did not include a requirement to verify battery float current every 7 days in accordance with STS 3.8.6, but required 7 days with associated conditions. The original proposed ITS 3.8.6 was a deviation from STS 3.8.6 that specified the 7-day interval requirement.

10. The licensee originally proposed ITS LCO 3.8.7, ''Inverter—Operating'' originally limits the time the inverter may be inoperable to 7 days in its March 27, 2002, submittal in lieu of 24 hours as recommended by NUREG–1431. The staff was concerned that the 7-day LCO was too long and also was not consistent with NUREG–1431.

11. The licensee proposed ITS 5.5.11, ''Diesel Fuel Oil Testing Program,'' which is a deviation from STS 5.5.13. The current CTS and UFSAR do not have any requirements for testing diesel fuel oil. Proposed ITS 5.5.11 adds a new program, ''Diesel Fuel Oil Testing,'' to require that a diesel fuel oil testing program is maintained with specific TS requirements for acceptance criteria and testing frequency.

IP2 design and licensing basis requires that each DG has an onsite underground storage tank containing oil for 48 hours of minimum safeguards load and a DG fuel oil reserve with sufficient fuel to support an additional 5 days of operation. ITS 5.5.11 will establish separate fuel oil testing programs for onsite underground storage tanks and the DG fuel oil reserve tanks. The proposed ITS adds to the Administrative Control Section of the TS a new diesel fuel oil testing program. It also incorporates several editorial changes in order to make the ITS consistent with the STS. With a few exceptions, this program follows the requirements specified in the STS.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the commission's regulations.

By October 27, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David E. Blabey, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10CAR 2.714(a)(1)(l)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. For further details with respect to the proposed action, see the licensee's application dated March 27, 2002, as supplemented by letters dated May 30, 2002, July 10, 2002, October 10, 2002, October 28, 2002, November 26, 2002, December 18, 2002, January 27, 2003, February 26, 2003, April 8, 2003, May 19, 2003, June 23, 2003, June 26, 2003, July 15, 2003, August 6, 2003, and September 11, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document room, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http\\www.nrc.gov.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of September, 2003.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Sr. Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24356 Filed 9–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation, Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain provisions of Title 10 of the Code of Federal Regulations (10 CFR) Sections 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K for Facility Operating License No. DPR–72, issued to Florida Power Corporation (the licensee) for operation of Crystal River Unit 3 (CR–3) located in Citrus County, Florida. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The licensee requests an exemption from the provisions of: (1) 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' which provides requirements to control hydrogen generated by zircaloy or ZIRLO fuel cladding after a postulated loss-of-coolant accident (LOCA); (2) 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' which requires the calculated emergency core cooling system (ECCS) performance for reactors with zircaloy or ZIRLO fuel cladding meet certain criteria; and (3) Appendix K, ''ECCS Evaluation Models,'' which presumes the use of zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated LOCA.

The proposed action would allow the licensee to use the M5 advanced alloy in lieu of zircaloy or ZIRLO, the materials assumed to be used in the cited regulations for fuel rod cladding in fuel assemblies at CR–3. M5 alloy would also be used in fuel assembly spacer grids, fuel rod end plugs, fuel assembly

guides, and instrument tubes. The fuel assemblies would be loaded into the CR–3 reactor core during the refueling outage in the fall of 2003, and used in operation during Cycle 14 and beyond.

The proposed action is in accordance with the licensee's application for exemption dated October 23, 2002, as supplemented by letters dated July 25 and August 11, 2003.

The Need for the Proposed Action

The Commission's regulations in 10 CFR 50.46(a)(i) and 10 CFR Part 50, Appendix K require the demonstration of adequate ECCS performance for light-water reactors that contain fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. In addition, 10 CFR 50.44(a) addresses requirements to control hydrogen generated by zircaloy or ZIRLO fuel after a postulated LOCA. Each of these three regulations, either implicitly or explicitly, assumes that either zircaloy or ZIRLO is used as the fuel rod cladding material.

In order to accommodate the high fuel rod burnups that are required for modern fuel management and core designs, Framatome Cogema Fuels (FCF) developed the M5 advanced fuel rod cladding and fuel assembly structural material. M5 is an alloy comprised primarily of zirconium (~99 percent) and niobium (~1 percent) that has demonstrated superior corrosion resistance and reduced irradiation-induced growth relative to both standard and low-tin zircaloy. However, since the chemical composition of the M5 advanced alloy differs from the specifications of either zircaloy or ZIRLO, use of the M5 advanced alloy falls outside of the strict interpretation of these regulations. Therefore, approval of this exemption request is needed to permit the use of the M5 advanced alloy as a fuel rod cladding material at CR–3.

Environmental Impacts of the Proposed Action

Use of M5 clad fuel will not result in changes in the operations or configuration of the facility. There will be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste. The NRC staff has also determined that the M5 fuel cladding will perform similarly to the current resident fuel. Accordingly, the proposed action will not significantly increase the probability or consequences of accidents. No significant changes are being made in the types of any effluents that may be released off site. There is no significant increase in the amount of any effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of denying the application and of the proposed alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Crystal River dated May 1973.

Agencies and Persons Consulted

On September 17, 2003, the NRC staff consulted with the Florida State official, William Passetti, of the Florida Department of Health Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 23, 2002, as supplemented by letters dated July 25 and August 11, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of September 2003.

For The Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24357 Filed 9–25–03; 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 October 1, 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:

Wednesday, October 1, 2003—8:30 a.m.–10 a.m.

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, Dr. Richard P. Savio, (telephone: 301–415–7363) 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: September 17, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–24359 Filed 9–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 1–4, 2003, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Wednesday, October 1, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

10:15 a.m.–10:20 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

10:20 a.m.–12 Noon: Final Review of the Fort Calhoun License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Omaha Public Power District regarding the License Renewal Application for the Fort Calhoun Station Unit 1 and the associated final Safety Evaluation Report prepared by the staff.

1 p.m.–3 p.m.: Interim Review of the AP1000 Design (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding the resolution of open items and related matters.

3:15 p.m.–4:45 p.m.: Proactive Material Degradation Assessment Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed proactive research program for assessing materials degradation at nuclear power plants.

5 p.m.–6:15 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following topics scheduled for the ACRS meeting with the NRC Commissioners on October 2, 2003: (1) Overview by the ACRS Chairman of several items of interest including, risk-informing 10 CFR 50.46 and proposed 10 CFR 50.69; License renewal activities; AP1000 design; Preapplication review of ESBWR design; and Power uprate review standard, (2) Improvement of the Quality of Risk Information for Regulatory Decisionmaking, (3) Materials Degradation Issues, and (4) Reactor Oversight Process.

6:30 p.m.–7:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

Thursday, October 2, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9 a.m.: Subcommittee Report on the Interim Review of the License Renewal Application for H. B. Robinson Nuclear Power Plant (Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Plant License Renewal regarding the review of the H. B. Robinson License Renewal Application and the staff's draft Safety Evaluation Report with open items.

9 a.m.–9:15 a.m.: Subcommittee Report on Fire Protection Matters (Open)—The Committee will hear a report by and hold discussions with Fire Protection Subcommittee Chairman regarding matters discussed at the September 9, 2003 meeting.

9:30 a.m.–11:30 a.m.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North to discuss the matters of mutual interest noted above.

12:30 p.m.–1:30 p.m.: Review of the PIRT Process (Open)—The Committee will hear a presentation by and hold discussions with Dr. Nourbakhsh, ACRS Senior Fellow, regarding his review of the Phenomena Identification and Ranking Table (PIRT) process.

1:45 p.m.–3:45 p.m.: Operating Experience Assessment Report—Effects of Grid Events on Nuclear Power Plant Performance (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's report on the effects of grid event (1985–2001) on nuclear power plant performance and related matters.

4 p.m.–6 p.m.: Format and Content of the NRC Safety Research Program Report (Open)—The Safety Research Program Subcommittee Chairman will discuss the format and content of the annual ACRS report to the Commission on the NRC Safety Research Program as well as assignments for the ACRS members.

6:15 p.m.–7:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

Friday, October 3, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Draft Final Revision to Regulatory Guide 1.168 (DG–1123), ''Verification, Validation, Review, and Audits for Digital Computer Software Used in Safety Systems of Nuclear Power Plants' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Draft Final Revision to Regulatory Guide 1.168.

10:15 a.m.–10:45 a.m.: Subcommittee Report on Reactor Fuels (Open)—The Reactor Fuels Subcommittee Chairman will provide a brief report on matters discussed during the September 29–30, 2003 meeting.

10:45 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

11:45 a.m.–12 Noon: Reconciliation of ACRS Comments and Recommendations (Open)—The

Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

Saturday, October 4, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–9 a.m.: Safeguards and Security (Closed)—The Committee will discuss issues for inclusion in the ACRS report on risk-informed vulnerability assessment and risk-informed decisionmaking.

Note: This session will be closed pursuant to 5 U.S.C. 552b(c)(1).

9 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue discussion of the proposed ACRS reports on matters considered during its meeting. In addition, the Committee will discuss a proposed ACRS report on Safeguards and Security matters (Closed).

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director for Technical Support if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: September 22, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–24360 Filed 9–25–03; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Thursday, October 2, 2003; 8:30 a.m., Friday, October 3, 2003.

PLACE: Wilmington, Delaware, at the Hotel DuPont, 11th & Market Streets, in the King/Sullivan Room.

STATUS: October 2—1 p.m. (Closed); October 3—8:30 a.m. (Open)

MATTERS TO BE CONSIDERED:

Thursday, October 2—1 p.m. (Closed)

1. Financial Update.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Friday, October 3—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 8–9, 2003.
2. Remarks of the Postmaster General and CEO.
3. Board of Governors Calendar Year 2004 Meeting Schedule.
4. Office of the Governors Fiscal Year 2004 Budget.
5. Preview of the 2004 Stamp Program.
6. Report on the Eastern Area and South Jersey District.
7. Tentative Agenda for the November 3–4, 2003, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–24616 Filed 9–24–03; 2:49 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs; notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of Participating Agencies: Office of Personnel Management and Railroad Retirement Board.

Purpose of the Match: The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Previously the RRB relied on the affected annuitant to report adjustments in the amounts of such public pension benefits.

Authority For Conducting The Match: Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552A(B)(3) OPM has established routine uses to disclose the subject information to RRB.

Categories of Record and Individuals Covered: The records to be used in the match and the roles of the matching participants are described as follows: OMB will provide RRB twice a year with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Record designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records will be transmitted to RRB for the approximately 2.3 million records in the system: Name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OMB file against the same fields in its Master Benefit Files. The Privacy Act System of Records designations for these files are: RRB–25, ''Research Master Record for Survivor Beneficiaries Under the Railroad Retirement Act,'' and RRB–26, ''Research Master Record for Railroad Employees and Their Dependents.'' For records that are matched, the RRB will extract the civil service payment information.

Inclusive Dates of the Matching Program: The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here in is addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: September 11, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–24312 Filed 9–25–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12878]

Issuer Delisting; Notice of Application of Time Warner Company, L.P., To Withdraw Its 7¼% Senior Debentures (due 2008) and Related Guarantees of Warner Communications Inc. and American Television and Communications Corporation, From Listing and Registration on the New York Stock Exchange, Inc.

September 22, 2003.

Time Warner Entertainment Company, L.P., a State of Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7¼% Senior Debentures (due 2003) and the related Guarantees of Warner Communications, Inc. (''WCI'') and American Television and Communications Corporation (''ATC''), each of which is a guarantor of the Debentures (''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer's General Partner approved resolutions on August 25, 2003, to withdraw the Issuer's Securities from listing on the NYSE. On September 9, 2003, the Board of Directors (''Board'') of each WCI and ATC approved resolutions related their guarantees.

In its application with the Commission, the Issuer stated the following with respect to its decision to withdraw the Security from the Exchange: The Securities are held by a small number of holders; there has been very little trading in the Securities on the NYSE in the 23-month period from September 2001 through July 2003, in the aggregate, only approximately $10 million principal amount of debentures were traded on the NYSE; the Issuer has four other debt securities outstanding, none of which is listed for trading on an exchange (all are actively traded in the over-the counter-market); the Issuer would prefer that all trading in its Securities occur in the over-the-counter market.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–24377 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 53618, September 11, 2003]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, September 18, 2003, 10 a.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The Closed Meeting scheduled for Thursday, September 18, 2003, was cancelled.

For further information please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24497 Filed 9–24–03; 11:20 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 29, 2003:

A Closed Meeting will be held on Tuesday, September 30, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, September 30, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal orders of investigation; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 23, 2003.

Margaret McFarland,

Deputy Secretary.

[FR Doc. 03–24498 Filed 9–24–03; 11:20 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48511; File No. PCAOB File No. 2003–05]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Compliance With Auditing and Related Professional Practice Standards and Advisory Groups

September 22, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on July 14, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 30, 2003, the Board adopted rules relating to compliance with auditing and related professional practice standards and relating to advisory groups. The proposal includes two rules (PCAOB Rules 3100 and 3700) and a definition that would appear in Rule 1001. The text of the proposed rules is as follows:

Section 1. General Provisions

Rule 1001. Definitions of Terms Employed in Rules

* * * * *

(a)(viii) Auditing and Related Professional Practice Standards.

The term ''auditing and related professional practice standards'' means the auditing standards, related attestation standards, quality control standards, ethical standards, and independence standards (including any rules implementing Title II of the Act), and any other professional standards, that are established or adopted by the Board under section 103 of the Act.

* * * * *

Section 7. Professional Standards

Part 1—General Requirements

Rule 3100. Compliance With Auditing and Related Professional Practice Standards

A registered public accounting firm and its associated persons shall comply with all applicable auditing and related professional practice standards.

* * * * *

Part 7—Establishment of Professional Standards

Rule 3700. Advisory Groups

(a) Formation.

To assist it in carrying out its responsibility to establish auditing and related professional practice standards, the Board will convene one or more advisory groups, in accordance with section 103(a)(4) of the Act.

(b) Composition.

Advisory groups, in combination or as sub-groups designated by the Board within one advisory group, will contain

individuals with expertise in one or more of the following area—

(1) accounting;

(2) auditing;

(3) corporate finance;

(4) corporate governance;

(5) investing in public companies; and

(6) other areas that the Board deems to be relevant to one or more auditing or related professional practice standards.

(c) Selection of Members of Advisory Groups.

Members of advisory groups will be selected by the Board, in its sole discretion, based upon nominations, including self-nominations, received from any person or organization.

Note: The Board will announce, from time to time, periods during which it will receive nominations to an advisory group. During those periods, nominations may be submitted by any person or organization, including, but not limited to, any investor, any accounting firm, any issuer, and any institution of higher learning.

(d) Personal Membership.

Membership in an advisory group will be personal to the individuals selected to serve on the advisory group. A member's functions and responsibilities, including attendance at meetings, may not be delegated to others.

(e) Ethical Duties of Advisory Group Members.

Members of an advisory group shall comply with EC3, EC8(a), EC9, and, with respect to any private publication or public statement about the Board or any advisory group or any of the activities of the Board or any advisory group, EC10 of the Board's Ethics Code.

(f) Ad Hoc Task Forces.

The Board may, in its discretion, establish ad hoc task forces. The membership of such task forces may include, but is not limited to, advisory group members. To the extent not otherwise required, members of ad hoc task forces shall comply with paragraph (e) of this Rule.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

(i) *Rules 1001(a)(viii) and 3100.*

Rule 1001(a)(viii) defines ''auditing and related professional practice standards'' as the auditing standards, related attestation standards, quality control standards, ethical standards, and independence standards (including any rules implementing Title II of the Act), and any other professional standards, that are established or adopted by the Board under section 103 of the Act (hereafter referred to in this Section A. as ''Standards'').

Section 103(a) of the Act directs the Board, by rule, to establish auditing and related attestation standards, quality control standards, and ethics standards ''to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by [the] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.'' Section 103(b) of the Act also directs the Board to establish independence standards to implement, or as authorized under, Title II of the Act.[1]

As a corollary to the Board's statutory authority to establish and amend Standards, all public accounting firms that are registered with the Board must comply with the Board's Standards. While this requirement is implicit in the Act, the Board has codified the obligation of registered firms to comply with the Board's Standards in Rule 3100. Any registered public accounting firm or person associated with such a firm that fails to adhere to applicable Board Standards may be the subject of a Board disciplinary proceeding in accordance with section 105 of the Act.[2] In general, the Board's Standards will apply to registered public accounting firms and their associated persons in connection with their audits of (and related attestations concerning) the financial statements of issuers, as defined in section 2(a)(7) of the Act, and those firms' auditing and related attestation practices.

(ii) *Rule 3700.*

While the Board will, by rule, establish Standards, it recognizes that the development of such Standards should be an open, public process in which investors, the accounting profession, the preparers of financial statements, and others will have the opportunity to participate. To this end, as discussed in PCAOB Release No. 2003–005 (April 18, 2003), the Board intends to provide for a public comment process on proposed standards.[3] The Board's staff will, of course, be actively involved in the standards-setting process, but the Board also encourages proposals and recommendations on its standards-setting agenda and standards development projects from the public. Moreover, in order to obtain the advice of a broad range of experts, the Board has determined to form an advisory group, the Standing Advisory Group (''SAG''), which may be divided into sub-groups by the Board if the need for specialized advice arises. Finally, the Board may also establish one or more ad hoc task forces to assist the staff with the drafting of technical language, among other things.

Section 103(a)(4) of the Act provides that the Board shall ''convene, or authorize its staff to convene, such expert advisory groups as may be appropriate * * * to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.'' The Board has decided initially that it is likely to exercise this authority by convening the SAG to participate in the standards-setting process. Rule 3700 addresses the formation, composition, and other basic matters concerning advisory groups, including the SAG.

(1) Role, Size and Composition.

The role of the SAG will be to assist the Board in *reviewing* existing

[1] *See also* Report of the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, on S. 2673, S. Rep. No. 107–205 (July 26, 2002) (''The Committee has concluded that the Board's plenary authority in this area is essential for the Board's effective operation, a position taken during the hearings by a number of witnesses * * *''). Board Rules adopting or modifying auditing and related professional practice standards require approval by the Commission. In addition, the Board recognizes that the Commission may also establish professional standards applicable to accountants that practice before it and audit reports filed with it and that the Commission has the authority to institute proceedings to amend the Board's Rules, including those that establish auditing and related professional practice standards. *See* sections 2(a)(10), 3(c)(2), and 107(b)(5) of the Act.

[2] In addition, the Act provides that any violation of the Board's Rules is to be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, or the rules and regulations issued thereunder, and any person violating the Board's Rules ''shall be subject to the same penalties, and to the same extent, as for a violation of [the Exchange] Act or such rules or regulations.'' Section 3(b)(1) of the Act.

[3] In response to PCAOB Release No. 2003–005, the Board received several comments relating to the process by which the Board will establish standards. While this release is intended to address only the adoption of Rules 3100 and 3700, the Board will nevertheless take these comments into consideration in its standards-setting work.

Standards, in *evaluating* proposed Standards recommended by Board staff, Board-formed technical task forces or others and *recommending* to the Board new or amended Standards. The role of the SAG will not ordinarily include technical drafting (which will be performed by the Board's staff, with the assistance of ad hoc task forces, when necessary). Instead, the Board will look to the SAG to provide advice and insight as to the need to formulate new Standards or change existing Standards and opinions on the impact of proposed new or changed Standards.

The Board contemplates that the SAG initially will have approximately 25 members. As noted above, the Board may, based on the circumstances of particular projects, prior to or after the formation of the SAG, form ad hoc task forces of specially qualified persons selected by the Board to assist it with specific projects. Members of any appointed ad hoc task force may or may not be members of the SAG.

The SAG will be composed of individuals with a variety of backgrounds, including practicing auditors, preparers of financial statements, investors (both individual and institutional), and others.[4] In order to achieve this diversity, the Board expects that no one field of expertise will predominate among the SAG membership. Although SAG members may be employed or otherwise affiliated with particular organizations, the Board expects SAG members to serve in their individual capacities and not to serve as representatives of particular interests, groups or employers.

(2) Nominations of SAG Members

In determining appointments to the SAG, the Board intends to solicit nominations, including self-nominations. Interested parties will have 45 days from the date of the Board's Notice (''Notice'') to the public to submit nominations on a form which will be provided in the Notice. Interested parties who have submitted nominations prior to the publication of the Notice, will be sent nomination forms for completion at the time of publication of the Notice.

(3) Qualifications

In evaluating nominations for the SAG, the Board will seek individuals with an interest in the quality of the audits of public companies. The Board may also consider certain factors in determining SAG appointments including but not limited to the following—

(a) SAG members will be individuals of integrity, with an understanding of the responsibilities for and the nature of financial disclosure required under the securities laws and the obligations of accountants with respect to the preparation of and issuance of audit reports with respect to such disclosures; and

(b) SAG members will have a working knowledge of one or more of the following subjects and a general understanding of the remaining subjects—

- generally accepted auditing standards (as developed by previous auditing standards setting bodies and adopted by the Board as Standards and, in the future, as set from time to time by the Board);
- generally accepted accounting principles;
- the creation, audit or analysis of public financial statements;
- public company corporate governance; and
- other fields that the Board deems to be relevant.

(4) Term

Unless the appointment is revoked for cause, as determined by the Board, or unless the SAG member voluntarily resigns from the SAG, membership on the SAG will be for a term of two years; provided, however, that approximately 50 percent of the initial members will be appointed for a three-year term to assure continuity. Members will not be limited in the number of terms that they may serve.

(5) Conditions of Membership

Rule 3700(d) specifically states that members of the SAG will serve in their individual capacities and therefore may not delegate their duties, including attendance at meetings, as SAG members. In addition, each appointee to the SAG shall agree in writing to the following ''conditions of membership'' in order to avoid potential conflicts of interest and to assure that the Board's standards-setting agenda is met—

(a) to serve on a voluntary basis without compensation from the Board;[5]

(b) to seek constructive resolutions to issues raised by the Board for the SAG;

(c) to act in the public interest in his or her individual capacity and not as a representative of any constituency;

(d) to attend at least 75 percent of all SAG meetings;[6]

(e) to agree to spend, at an expected minimum, between 50 and 100 hours per year on SAG matters or such reasonably greater amount of time as may be necessary to achieve the goals of the SAG and the Board;[7]

(f) to refrain from using his or her position on the SAG to influence Board members or Board staff on matters directly affecting that SAG member or his or her employer, business partners or clients;[8]

(g) to recuse himself or herself, or otherwise withdraw from, consideration of any matter before the SAG or the Board directly affecting such SAG member, his or her employer, business partners or clients. If recusal or withdrawal is not practical in either such member's or the Board's opinion, such SAG member shall resign from the SAG;[9]

(h) to be bound by EC3, EC8(a), EC9, and, with respect to any private publication or public statement regarding the Board or the SAG or any of the activities of the Board or the SAG, EC10 of the Board's Ethics code;[10]

(i) to annually certify his or her continuing compliance with ''the conditions of membership;'' and

(j) to agree to any such other provisions that the Board may deem

[4] The Board also anticipates appointing individuals from academia and State accounting regulators, among others, to the SAG.

[5] SAG members shall be entitled to reimbursement for documented reasonable travel expenses relating to participation in official SAG meetings or other SAG activities.

[6] Attendance may be in person or by telephone or teleconference. SAG members who fail to participate in the minimum number of meetings shall be subject to removal by the Board unless excused from attendance by the Chair of the SAG for good reason.

[7] During the first year of the SAG, members may expect to spend more than the minimum number of hours on SAG matters.

[8] SAG members are not precluded from appearing or practicing before the Board regarding matters generally affecting all issuers or registered public accounting firms, including, indirectly, the member, his or her employer, business partners or clients. Accordingly, a SAG member who is employed by a registered public accounting firm would be permitted to be involved in preparing a comment on a Board rule proposal that generally affects all issuers or registered public accounting firms.

[9] Matters generally affecting issuers or registered public accounting firms, even though affecting the SAG member, his or her employer, business partners or clients, shall not require the member to recuse or withdraw him or herself from consideration of the matter or to resign from SAG. The Board expects that most standards-setting projects will affect issuers (or categories of issuers) and registered public accounting firms and their associated persons in a generally similar manner; however, if a standard would have a unique or disproportionate effect on a particular issuer or firm, a SAG member employed by that issuer or firm would be required under Rule 3700 to recuse himself or herself.

[10] The text of the Ethics Code as adopted by the PCAOB on June 30, 2003 is available on the PCAOB Web site. In PCAOB Release No. 2003–008 (June 30, 2003), the Board clarified that for purposes of applying EC8(a) to SAG members, the SAG members shall not be considered to lack independence or objectivity with regard to SAG matters merely because they (or their employer, business partners or clients) are subject to the direct or indirect oversight of the Board.

necessary to avoid even the appearance of a conflict of interest.[11]

(6) Meetings and Board Relations.

The Board has determined that the first Chair of the SAG will be the Board's Chief Auditor and Director of Professional Standards who will be a non-voting member of the SAG. The Board will approve the agenda for all annual, semi-annual or quarterly SAG meetings as set forth below. Agenda items may also be added where the Board determines that the assistance of the SAG is required in response to emerging issues or problems. The Chair will be responsible for preparing the meeting agenda, organizing and overseeing meetings, conference calls and related activities, acting as the general liaison to the Board and finalizing all submissions to the Board based on the SAG recommendations.

The SAG will hold an annual meeting to discuss the agenda presented to the SAG on the annual standards-setting process and related matters. The SAG will also hold a semi-annual meeting. Both the annual and the semi-annual meetings will be open to the public. Meetings of the SAG may also be held, at the direction of the Board or the Chair, during the intervening quarters. In addition, at the direction of the Chair, monthly meetings of the SAG may be held, by video or teleconference, for the Board's staff to report on new issues raised by the Board for the SAG's consideration and to discuss the status of pending issues. Final decisions on recommendations to the Board and related activities will be conducted at the annual, semi-annual, or other open meeting of the SAG.[12] The meetings held in the quarters between the annual and semi-annual meeting, if any, and the monthly meetings will not generally be open to the public.

If so directed by the Chair of the SAG, the SAG may convene hearings, roundtable discussions or other fact-finding activities designed to assist the SAG in the development of recommendations on new or amended Standards or other recommendations to the Board.

Decisions on whether a recommendation should be made to the Board will be by a majority of the SAG members present in person or by video or teleconference. Recommendations from the SAG will be presented to the Board at an open meeting of the Board. Such recommendations will be provided in writing, including dissenting opinions, if any, by SAG members. The Board retains the exclusive authority to adopt, modify, or reject any SAG recommendation, in its sole discretion, in order to protect investors by improving the fairness and reliability of corporate disclosures as set forth in the Act.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Under the proposed rule concerning compliance with standards, all registered public accounting firms and their associated persons must comply with all applicable auditing and related professional practice standards. The functional equivalent of this requirement is found in the Act, which provides for the Board to impose sanctions on registered firms or associated persons who violate such standards, and the codification of that requirement in the Board's rules does not add to the burden already imposed by the Act. The rules relating to advisory groups do not impose any burden on competition but, rather, provide for public participation, on a voluntary basis, in the process of advising the Board on the establishment of standards.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2003–005 (April 18, 2003). A copy of PCAOB Release No. 2003–005 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org.* The Board received 22 written comments. The Board has clarified and modified certain aspects of the proposed rules in response to comments it received, as discussed below.

The Board had proposed to use ''professional auditing standards'' as the term defined in Rule 1001(a)(viii). Several commenters expressed concern that characterizing attestation, quality control, ethical, and independence standards as ''professional auditing standards'' would confuse people as to the defined term's meaning. To address these concerns, the Board has chosen to use the term ''auditing and related professional practice standards'' as the defined term for the standards established or adopted by the Board under section 103 of the Act. The Board has used the longer term ''auditing and related professional practice standards,'' rather than the shorter ''professional standards,'' because the term ''professional standards'' is defined otherwise in section 2(a)(10) of the Act. The term ''auditing and related professional practice standards'' is similar to that portion of the definition of the term ''professional standards'' that appears in section 2(a)(10)(B) of the Act. (Hereafter in this section C., the term ''Standards'' shall be used to refer to the standards encompassed by the defined term ''auditing and related professional practice standards.'')

In addition, the Board's proposed definition was based on a portion of the definition of ''professional standards'' in section 2(a)(10)(B) of the Act. For purposes of clarity, the Board has modified this definition slightly to track more closely the description of the standards the Board will set in section 103(a)(1) of the Act. The definition still includes any other type of standard provided for in the definition of ''professional standards'' in section 2(a)(10)(B) of the Act that the Board establishes or adopts under section 103 of the Act. Accordingly, the definition, as revised, covers the same scope of standards as the Board's proposed rule.

A number of commenters suggested that proposed Rule 3100 was either beyond the Board's authority or would create the impression that the Rule applied to areas outside the Board's authority. To address these concerns, commenters suggested adding language about the scope of the Board's authority to Rule 3100. After considering these comments, the Board decided to adopt the Rule as proposed. Rule 3100 requires registered public accounting firms and their associated persons to comply with all *applicable* Standards. Accordingly, if the Board's Standards do not apply to an engagement or other activity of the firm, Rule 3100, by its

[11] The Commission understands that paragraphs (f) and (g) of the conditions of membership are intended to implement particular aspects of Rule 3700(e). In addition, the Commission understands that paragraph (j) is intended to address other individual conflict of interest situations of advisory group members that may arise, as distinct from rules of general applicability that would be subject to Commission approval.

[12] The Board expects the SAG to make decisions in an efficient and speedy manner. To this end, the SAG need not defer decisions on recommendations for the annual or semi-annual open meetings. Rather, at the direction of the Chair, the SAG may make decisions on recommendations at any meeting, so long as it is open to the public in some manner, including, at the direction of the Chair, telephonically.

own terms, does not apply to that engagement or activity.[13]

Finally, one commenter suggested that Rule 3100 also require registered public accounting firms and their associated person to be duly licensed, registered or permitted or otherwise to hold valid practice privileges and be in good standing under the laws of each applicable state. Registration with the Board does not supersede state registration or licensing requirements and the Board expects registered public accounting firms and their associated persons to comply with state and other applicable legal requirements.[14] Rule 3100, however, is merely intended to codify the obligation of registered public accounting firms and their associated persons to comply with Board Standards and to ensure that the Board's Standards are enforceable. Accordingly, the Board decided not to amend the Rule as proposed to reflect this suggestion. Authorities other than the Board may nevertheless require that accounting firms or individual auditors comply with the Board's Standards in the conduct of audits of (or attestations concerning) the financial statements of non-issuers.[15] In that event, those authorities may enforce the Board's Standards pursuant to their own processes.

In addressing proposed Rule 3700, commenters suggested that it might be appropriate to establish more than one advisory group since expertise is likely to be required in more than one specialized area. The Board is aware that it may need advice in one or more specialized areas. However, the Board has determined to form only one standing advisory group, the SAG. This group, however, may, at the Board's direction, form specialized sub-groups as needed. In addition, the Board may form ad hoc task forces to work with Board staff in formulating Standards in specialized areas which may then, in the Board's discretion, be added to the SAG's agenda for discussion at SAG meetings.

In addition, commenters recommended adding other specific groups from which nominations could be received to the groups identified in Rule 3700(c) as proposed. After careful consideration of these comments, the Board determined that Rule 3700(c) should reflect the Board's intention to accept nominations from all sources. Accordingly, Rule 3700(c) was revised to state that the Board will accept nominations from any person or organization, including self-nominations. A note to this part of Rule 3700 provides that the Board will announce, from time to time, periods during which it will receive nominations for an advisory group.

With respect to qualifications of the advisory group members, one commenter suggested that all members have qualifications similar to those ''requirements set forth for audit committee members in recently issued stock exchange and SEC'' rules or proposed rules. The New York Stock Exchange (''NYSE'') proposed listing requirements require that all members of audit committees of listed companies be financially literate. In addition, at least one member of the audit committee must meet the definition of an ''audit committee financial expert.''[16] The NASDAQ Stock Market (''NASDAQ'') proposed rules regarding qualifications for service on audit committees require that all audit committee members must be able to read and understand financial statements including a company's balance sheet, income statement, and cash flow statement and that the audit committee have at least one member who meets the definition of an ''audit committee financial expert.''[17] After considering this comment, the Board decided to adopt the Rule as proposed by the Board. While Rule 3700 does not specifically state the qualifications each member must have, the Rule does set forth the types of expertise that the Board will look for in advisory group members. In addition, as noted in Section C.4. of this Release, the Board may also consider certain specific qualifications in selecting nominees to the SAG. The Board believes that it will likely select members who, at a minimum, would meet the general qualifications set forth for ''all'' audit committee members in the proposed Rules of the NYSE and NASDAQ while providing the Board with the flexibility to select members from a broad spectrum of backgrounds to assist it in meeting the requirements of the Act. SAG members will be selected based upon qualifications which will be elicited from them on a nomination form and through the evaluative process.

Furthermore, commenters suggested that the composition of the SAG be flexible because the Board may find that it is unable to attract a sufficient number of qualified members from fields such as finance and investment. In response to this concern, it should be noted that the Board expects that the SAG will be broadly representative and that no one field of expertise will predominate among the SAG membership. Other concerns regarding composition related to assuring that the SAG have a sufficient number of members with technical expertise including requiring a majority of members to be practicing auditors. Although the Board certainly intends that the SAG have practicing auditors among its members, the Board believes that it is important that the SAG be able to provide advice in a broad range of areas, including technical auditing expertise, and that technical expertise in particular areas may be obtained by forming ad hoc task forces, as needed and as appropriate for particular standards-setting projects. Other commenters recommended that—

(a) the four largest auditing firms be represented on the SAG;

(b) non-U.S. auditors be represented;

(c) the number of members associated with a single firm, company or association be limited;

(d) membership be dispersed among those affiliated with firms, companies and associations of various sizes; and

(e) there be a balance between financial information suppliers (representatives of public companies and auditors) and financial information users (equity and debt investors).

As noted above, the Board recognizes the need to have diversity on the SAG and in selecting members will keep

[13] For example, the Board's Interim Auditing Standards provide that, ''[i]n connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)).'' *See* Rule 3200T. The term ''audit report'' is defined in the Act and the Board's Rules to mean the audit of an issuer. *See* Rule 1001(a)(vi), adopted by the Board in PCAOB Release. No. 2003–007. Moreover, the Board notes that it would not be a correct description of its authority to say, as one commenter suggested Rule 3100 provide, that ''A registered public accounting firm and its associated persons shall comply with all applicable professional auditing standards *in performing an audit of an issuer.*'' Particularly with respect to the quality control standards the Board is authorized to establish, the Board may adopt standards that, while related to registered public accounting firms' audit practices, must be complied with other than in the course of performing an audit. Cf. section 103(a)(2)(B) of the Act (requiring the Board to include, among the ''quality control standards that it adopts with respect to the issuance of audit reports, requirements * * * relating to * * * hiring, professional development, and advancement of personnel'').

[14] *See* Rule 2–01(a) of Regulation S–X, 17 CFR 200.2–01(a).

[15] Cf. section 209 of the Act (stating that ''[i]n supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable * * *'').

[16] *See* SEC Release No. 34–47672; File No. SR–NYSE–2002–33 (April 11, 2003).

[17] *See* SEC Release No. 34–47516; File No. SR–NASD–2002–141 (March 17, 2003).

diversity in mind while assuring that no one expertise will predominate among the SAG membership.

With respect to the actual functions of the SAG, one commenter, suggested that the SAG be involved in all standards-setting proposals while another commenter recommended that the actual drafting of the Standards fall within the SAG's authority. In order to maintain flexibility in the rulemaking process, the Board determined not to revise the proposed Rule to reflect these comments. Although the SAG is likely to be involved in the Board's standards-setting process as discussed in the Release, the Board does not intend to make SAG involvement mandatory to every standards-setting project. In addition, the actual drafting of the Standards is likely to be done by the Board's staff assisted by ad hoc task forces where necessary.

Another comment related to recommending that the SAG work toward ''harmonizing'' international standards. Neither Rule 3100 nor 3700 is intended to address substantive standards-setting issues. Rather the Board intends to address such issues, including cooperation with standards setters in other jurisdictions, in the future.

Commenters also made recommendations regarding SAG procedural matters. These commenters suggested that the Board address—

(a) the process for making recommendations on Standards for consideration by the Board;

(b) whether or not SAG meetings would be open to the public;

(c) the format and the frequency of the meetings;

(d) the process by which the Board will set the SAG's agenda;

(e) the appointment of a Chair for the SAG;

(f) whether the Board will provide all resources for drafting, editing, monitoring comments and publishing new and amended Standards;

(g) the term of appointment to the SAG; and

(h) an avenue for minority viewpoints to be expressed in any report or recommendation to the Board.

With the exception of the comment on resources for drafting and publishing new Standards, the Board has addressed all of these comments in Section B.7. of the Release. In summary, the SAG will hold an annual meeting and a semi-annual meeting. Additional meetings may be held in the intervening quarters. Monthly telephonic meetings are also expected to be held at the discretion of the Chair. The annual and semi-annual meetings, and any meeting at which the SAG makes a final decision on a recommendation to the Board, will be open to the public. Agenda items for the SAG will be driven in part by the schedule to be set by the Board for the review of the Interim Auditing Standards. Other agenda items will be added by the Board where the Board determines that a response to emerging issues or problems connected with audits needs to be addressed. The Board determined that the first Chair of the SAG will be the Board's Chief Auditor and Director of Professional Standards. All SAG members will be appointed for two-year terms except that approximately one-half of the appointees initially appointed to the SAG will be appointed for a three-year term to assure continuity. There will be no limits on the terms that a member of the SAG may serve. The Board anticipates that drafting, editing, monitoring comments and publishing, will be conducted by the Board and its staff. To the extent that the SAG is specifically authorized by the Board to undertake any of these functions and the expenses have been preapproved by the Board or a staff member delegated by the Board, the Board will cover the SAG's costs.

In response to the issue of whether the SAG's meetings will be open to the public and in order to assure that the public is informed of the SAG's operations, the Board determined that the annual and semi-annual meetings of the SAG will be open. In addition, decisions on making recommendations to the Board will only be made at an open meeting of the SAG. All recommendations to the Board by the SAG will be presented to the Board in open public meetings of the Board and such presentations will include the presentation of minority views of the SAG members. Finally, it should be noted that Board standards-setting proposals will be subject to the public comment process before being adopted by the Board.

With respect to Rule 3700(e) relating to the ethical duties of the SAG members, one commenter recommended that the SAG members be subject to Section EC14, the certification requirements, of the Ethics Code. In response to this comment, the Board added to its ''conditions of membership'' described in Section C of the Release, a requirement that members of the SAG shall annually certify their continuing compliance with the ''conditions of membership.'' A second commenter recommended that both Rule 3700(e) and EC8(a) of the Ethics Code be clarified to confirm that being a practicing auditor does not, in and of itself, constitute a financial interest requiring recusal. Section EC8(a) of the Ethics Code was revised to add an explanatory note that clarifies this issue.[18] A third commenter recommended that members of the SAG be prohibited from ''unauthorized'' speaking for the Board. In response to this comment, the Board revised Rule 3700(e) to make EC10 of the Board's Ethics Code applicable to any private publication or public statement by an advisory group member with regard to the Board or the advisory group or any of the activities of the Board or the advisory group. Finally, a fourth commenter recommended that a member of the SAG be permitted to share SAG material with support personnel within the member's home organization who are assigned to assist the member in his or her duties. The Board did not add a provision to address this concern. The Board believes that SAG members will normally be able to perform their responsibilities without needing access to non-public Board information. To the extent that it may be appropriate, from time to time, to permit non-public standards-setting information to be shared with individuals outside the SAG, including to permit SAG members to consult technical experts who are not employees or staff of the Board, the Board may require that such individuals agree to the confidentiality provisions under Section EC9 of the Ethics Code.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Section 19(b) of the Exchange Act provides that 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 Board consents, the Commission will:

(a) by order approve such proposed rules; or

(b) institute proceedings to determine whether the proposed rules 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 rules are consistent with the requirements of Title I of the Act. Persons making written submissions should file six

[18] *See* PCAOB Release No. 2003–008 (June 30, 2003).

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 rules that are filed with the Commission, and all written communications relating to the proposed rules 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 PCAOB. All submissions should refer to File No. PCAOB–2003–05 and should be submitted by October 17, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24324 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48506; File No. PCAOB–2003–04]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Ethics Code

September 22, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on September 23, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rules described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 30, 2003, the Board adopted an Ethics Code (''Code'' or ''EC'') to govern the conduct of its members, employees, and certain contractors and consultants. The proposed Code consists of 14 sections (EC 1 through 14). The text of the Ethics Code (technical numbering changes in this release made pursuant to authorization from the PCAOB) is as follows:

Ethics Code

EC1. Application of Code

The provisions of this Ethics Code apply, according to their terms, to—

(a) present and former Board members and staff;

(b) the spouse, spousal equivalent, and dependents of Board members and staff; and

(c) designated contractors and consultants to the Board.

Note: Rule 3700(e) requires members of a Board advisory group to comply with certain provisions of the Ethics Code.

EC2. Definitions

(a) Reference to Rules of the Board

Unless the context requires otherwise, the definitions provided in Section 1001 of the Rules of the Board apply to the words and terms contained in this Ethics Code.

(b) Code

The term ''Code'' means this Ethics Code, as it may be amended from time to time.

(c) Dependent

The term ''dependent'' of a Board member or staff means a person who receives more than half of his or her support for the most recent calendar year from the Board member or staff.

(d) Designated Contractors and Consultants

The term ''designated contractors and consultants'' means certain persons or business organizations—

(1) with which the Board enters into contracts for services, including contracts that provide for both goods and services;

(2) which the Board, or its designate, has determined should be subject to this Code, in whole or in part; and

(3) for which the contract contains a provision expressly incorporating this Code, in whole or in part.

Note: The Board will maintain a list of designated contractors and consultants, which will be available to the public. Nothing in this provision will restrict the Board's right to impose additional contractual restrictions and limitations on any contractor or consultant. The Board is committed not to use its contracting authority to convert a person who would ordinarily be an employee to a contractor or consultant, as a means of allowing that person to be excluded from the provisions of this Code.

(e) Honoraria

The term ''honoraria'' means anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. Neither the waiver of conference fees nor acceptance of a modest speakers-only meal constitutes ''honoraria.''

Note: Items, which are provided to all conference participants, including speakers, are not provided ''in exchange for'' a speech and thus not considered to be ''honoraria.''

(f) Practice

The term ''practice'' means—

(1) knowingly acting as an agent or attorney for, or otherwise representing any other person in any formal or informal appearance before the Board or Commission with respect to Board-related matters; or

(2) making any oral or written communication on behalf of any other person to, and with the intent to influence, the Board or Commission with respect to Board-related matters.

Note: For purposes of this definition, participating in the financial reporting process as the officer or director of an issuer or participating in an audit of an issuer's financial statements does not, in and of itself, constitute practice before the Board or the Commission.

(g) Professional Staff or Professional Staff of the Board

The terms ''professional staff'' or ''professional staff of the Board'' mean those persons who are employed by the Board and who are exempt, pursuant to Section 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. 201 et sec.), from Sections 6 and 7 (minimum wage and overtime provisions) of that act.

Note: These terms may, according to the context, alternatively be used to refer to a single such employee, or to all such employees.

(h) Staff or Staff of the Board

The terms ''staff'' or ''staff of the Board'' mean those persons who are employed by the Board.

Note: These terms may, according to the context, alternatively be used to refer to a single such employee, or to all such employees.

EC3. General Principles

(a) The purpose of this Code is to maintain the highest standards of ethical conduct among Board members and staff, and to provide the public with confidence in the objectivity of the Board's decisions by seeking to avoid both actual and perceived conflicts of interest among Board members and staff. The general principles within this section form the basis for the ethics rules and standards of conduct contained in the Code. When a situation is not covered by the Code's specific standards, Board members and staff shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Board members and staff should at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and the need for public confidence in the objectivity and deliberative process of the Board.

(2) Board members and staff should take great care to conduct themselves and all of their activities in such a manner so that their personal investments or other personal activities will not affect their professional independence or objectivity, or otherwise hinder the interests or reputation of the Board.

(3) Board members and staff should recognize that the degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

(b) No Board member or staff shall act in a manner, regardless of whether specifically prohibited by this Code, which might reasonably result in or reasonably create the appearance that the employee is—

(1) using his or her official position with the Board, or confidential information obtained through service for the Board, for the private gain of any person;

(2) giving preferential treatment to any person with respect to the Board member or employee's work for the Board;

(3) losing independence or objectivity with respect to his or her work for the Board;

(4) adversely affecting the public confidence in, or the integrity, independence or objectivity of the Board; or

(5) otherwise hindering the interests or reputation of the Board.

EC4. Financial and Employment Interests

(a) While employed by the Board, no Board member or professional staff shall—

(1) be owed, directly or indirectly, any financial or other obligation by any former employer, business partner, client, or publisher except—

(A) routine banking and other routine commercial relationships;

(B) securities and other investments permitted by this Code;

(C) benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client;

(D) profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client;

(E) royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board; or

(F) such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board; or

(2) owe, directly or indirectly, any financial or other obligation to any former employer, business partner or client, except—

(A) routine banking and other routine commercial relationships;

(B) covenants not to compete;

(C) non-disclosure agreements; or

(D) such other obligations permitted by this Code, or as may be specifically and expressly approved by the Board.

(b) Notwithstanding any other provision of this Code, no member of the Board or his or her spouse, spousal equivalent, or dependents may share in any of the profits of, or receive payments from, a public accounting firm, other than fixed continuing payments under standard arrangements for retirement from public accounting firms.

EC5. Investments

(a) Except as provided in this Section, nothing in this Code prohibits Board members and staff, or their spouses, spousal equivalents, or dependents, from owning and holding securities (including futures), real estate, commodities (including futures), exchange-traded options and other investments held for personal investment purposes, except that no Board member or staff may have any financial interest in a public accounting firm.

(b) Board members and staff should at all times be mindful of their responsibilities to the Board and shall avoid personal financial activities which might affect or reasonably create the appearance of affecting their independence or objectivity.

(c) Board members and staff should at all times be mindful that, in the course and scope of their employment activities, they may obtain knowledge of confidential, non-public information which, if disclosed, might affect the value of particular securities or investments. Accordingly, Board members and staff may not—

(1) disseminate or otherwise disclose any confidential, non-public information obtained by virtue of their position with the Board, regardless of whether that information may be considered to be ''material'' under the securities laws; or

(2) use such information for the financial gain of themselves or others.

Note: Concurrent restrictions on disclosure of non-public information are provided in EC9.

(d) Board members and professional staff shall annually disclose their holdings, and the holdings of their spouses, spousal equivalents, and dependents, in securities of issuers (including exchange-traded options and futures).

(1) For initial disclosures, statements shall be filed with the Ethics Officer within the first 60 days of commencement of service with the Board, or 60 days from the effective date of this Code, whichever is later.

(2) Subsequent disclosures shall be filed with the Ethics Officer on May 1, commencing the first year following the initial disclosure.

(3) Disclosure statements by Board Members shall be made available to the public.

(4) Disclosure statements by professional staff shall remain confidential.

Note: The form and content of this disclosure statement shall be included in the Board's ethics manual.

EC6. Outside Activities

(a) No member of the Board may undertake any employment or other activity for compensation outside of service to the Board.

(b) Staff of the Board may only undertake other employment or other activity for compensation with the express and specific approval of the Board or such person to whom the Board may delegate such approval authority.

(c) No Board member or staff of the Board shall engage in any outside activity, whether or not for compensation, which—

(1) affects or reasonably creates the appearance of affecting his or her independence or objectivity;

(2) interferes with his or her responsibilities to the Board; or

(3) otherwise hinders the interests or reputation of the Board.

EC7. Gifts, Reimbursements, Honoraria and Other Things of Value

(a) No Board member or professional staff shall, directly or indirectly, solicit or accept any gift, reimbursement, honoraria or anything of monetary value from any source, which might reasonably be viewed as—

(1) interfering with his or her independence, objectivity or responsibilities to the Board; or

(2) otherwise hindering the interests or reputation of the Board.

Note: Although this provision does not extend to non-professional staff, such staff should remain cognizant of corresponding duties imposed by EC3 and EC5.

(b) No Board member or staff shall accept payment for or reimbursement of official travel-related expenses from any organization, except—

(1) for travel that is in direct connection with the employee's participation in an educational forum; and

(2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by—

(A) a federal, state or local governmental body, or an association of such bodies,

(B) an accredited institution of higher learning,

(C) an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms or issuers, or

(D) institutions equivalent to those in EC 7(b)(2)(A)–(C) outside the United States.

EC8. Disqualification

(a) If a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she, or his or her spouse, spousal equivalent, or dependents, may have a financial interest or other similar relationship which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to the Board's function or activities, then he or she shall, at the earliest possible date—

(1) disclose such circumstances and facts, as set forth in subsection (b); and

(2) recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.

Note 1: For the purposes of applying this provision to members of an advisory group convened by the Board, those members shall not be considered to lack independence or objectivity with regard to advisory group matters merely because they (or their employer, business partners or clients) are subject to the direct or indirect oversight of the Board.

Note 2: Although this provision does not extend to non-professional staff, such staff facing circumstances that may affect their ability to perform their functions should seek advice from the Board's Ethics Officer.

(b) For a member of the Board, disclosure shall be made to all other members of the Board. For professional staff of the Board, disclosure shall be made to the Board Chair, or his or her designee.

(c) For a period of 12 months commencing on date of appointment or employment, no Board member or professional staff may participate in the making of a decision which is reasonably likely to have a material effect, direct or indirect, on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within five years from the date of appointment or employment with the Board. For purposes of this section, participating in the making of a decision which affects a former employer, business partner or client to the same degree as similarly situated people or business organizations, does not constitute an ''indirect'' effect.

EC9. Non-Public Information

(a) Unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly.

(b) The provisions of this Section shall continue in effect after the termination of employment or Board membership.

Note: Concurrent restrictions on disclosure of non-public information are provided in EC5(c).

EC10. Speaking for the Board

Unless authorized to speak on behalf of the Board, Board members and professional staff shall include a disclaimer for any private publication or public statement by indicating that the views expressed are those of the author or speaker and do not necessarily reflect the view of the Board or other Board members or staff.

EC11. Ethics Officer

The Board shall designate an Ethics Officer who shall be empowered to—

(a) counsel Board members and staff regarding compliance with or potential violation of this Code;

(b) issue advisory opinions, as deemed necessary, to Board members and staff regarding potential violations of this Code; and

(c) make recommendations to the Board regarding waiver requests and potential violations of, or amendments to, this Code.

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

(1) Board members and professional staff may not negotiate prospective employment with a public accounting firm or issuer, without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

(2) For purposes of this section, ''negotiating prospective employment'' means participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute ''negotiating prospective employment.''

(b) Prohibition on Practice Before the Board or Commission

(1) Board members and professional staff shall be restricted from practice before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.

(2) Former Board members and professional staff shall not practice before the Board, or the Commission with respect to Board-related matters, on a particular matter in which the Board member or professional staff participated personally and substantially as a Board or staff member and which involved a specific party or specific parties at the time of such participation.

EC13. Waiver

Unless otherwise prohibited by law, the Board (or person to whom the Board may delegate this responsibility as to staff) may grant a request for waiver of any provision of this Code. Such waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer. The Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board. Waivers will be made available to the public, subject to the withholding of information that would constitute a clearly unwarranted invasion of personal privacy.

EC14. Certification

Board members, staff and designated contractors and consultants agree to comply with this Code at the commencement of their service or contract with the Board and shall, throughout the term of their appointment, employment or contract, certify annually in writing their continuing compliance with it.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed Code and discussed any comments it received on it. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Section 101(g)(3) of the Act requires the Board to establish ethics rules and standards of conduct for members and staff of the Board. Although the Act does not specify a deadline for the establishment of such rules and standards, the Board recognized that establishing a strict, enforceable Code early in the Board's development would send a strong message to the public that it takes its ethical obligations seriously in pursuing its mission to help restore confidence in issuer audits.

The Code consists of 14 sections (EC 1 through 14). Each section of the Code is discussed below.

Application of Code

EC1 provides that the provisions of the Ethics Code shall apply, according to their terms, to present and former Board members and staff, the spouses, spousal equivalents, and dependents of Board members and staff, and certain contractors and consultants to the Board. A note to the rule cross-references Rule 3700(e), which provides that members of Board advisory groups are subject to certain provisions in the Ethics Code.

EC1. Definitions

EC2 contains definitions of terms used in the Board's Ethics Code.[1]

Reference to Rules of the Board

EC2(a) provides that, unless the context requires otherwise, the definitions provided in Section 1001 of the Rules of the Board apply to the words and terms contained in this Ethics Code.

Dependent

EC2(c) defines ''dependent'' as any person who receives more than half of his or her support for the most recent calendar year from the Board member or staff. The Ethics Code, as proposed, did not contain a definition of ''dependent,'' but had defined the term ''immediate family.'' Two commenters recommended that the Board adopt a definition of ''immediate family'' that more closely resembles the Commission's definition of ''immediate family member'' in its auditor independence rules. The Commission's definition of ''immediate family'' covers an individual's ''spouse, spousal equivalent, and dependents.''[2]

The Board agreed, in principle, with this recommendation. To promote clarity, however, the Board eliminated its use of the defined term ''immediate family'' and added ''spouse, spousal equivalent, and dependents'' directly to those provisions of the Ethics Code that previously used the defined term ''immediate family.'' While the Board only included a definition, based on the Commission's interpretation of Regulation S–X, for ''dependent,'' the Board will interpret each of these terms in a manner consistent with how they are used in the Commission's Regulation S–X definition.[3] Accordingly, ''spouse'' will mean husband or wife, whether by marriage or common law, and ''spousal equivalent'' will mean cohabitant occupying a relationship generally equivalent to that of a spouse.

While the definition of ''dependent'' applies equally to minor or adult dependents, depending on their receipt of support from the Board or staff member, there may be situations in which it might be appropriate for the Ethics Code to apply differently in the case of an adult dependent who does not reside with the Board or staff member. If appropriate and consistent with EC13, the Board envisions that the Board's Ethics Officer or other person to whom the Board delegates waiver authority with regard to staff will recommend a waiver in such situations.

Designated Contractors and Consultants

EC2(d) defines the term ''designated contractors and consultants'' as those persons or business organizations with whom the Board enters into contracts for services, whom the Board (or its designate) determines should be subject to the Code, and for which the contract contains a provision expressly incorporating this Code (in whole or in part). The Board will develop and maintain a list of designated contractors and consultants, which will be available to the public and will reserve the right to contractually impose additional restrictions and limitations on any contractor or consultant.

Two commenters indicated that they believed the original definition was overly vague and could apply to all providers of goods and services to the Board. The proposing release provided a two-part test for designated contractors and consultants. It indicated that designated contractors and consultants are those persons with whom the Board entered into contracts for services and for which the contracts expressly incorporated the Code, in whole or in part. Based upon these concerns, the Board added a third criterion—a requirement that the Board determine, on a case-by-case basis, whether, and to what degree, each contractor or consultant should be subject to the Code.

Honoraria

EC2(e) defines ''honoraria'' as anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. EC2(e) further indicates that neither the waiver or conference fee, nor the acceptance of a modest speakers-only meal shall constitute honoraria. ''Nominal value'' will initially be interpreted to mean fair market value of $50 or less.

Practice

EC2(f) defines ''practice'' as it relates to activities before the Board or Commission. Subparagraph (1) of the definition provides that practice means knowingly acting as an agent or attorney for, or otherwise representing any person (other than oneself) in any formal or informal appearance before the Board or Commission. Subparagraph (2) provides an alternative meaning, indicating that practice also means making any oral or written communication on behalf of any person (other than oneself) to, and with the intent to influence, the Board or Commission.

This definition, as incorporated in EC12(b), is intended to restrict affected persons from certain representational activities. However, this definition, as incorporated by EC12(b), is not intended to prevent affected persons from participating in the preparation of documents, communications, presentations or the like, provided the affected persons do not appear before, or

[1] Certain definitions in the Board's rules that are self-explanatory are not discussed below.

[2] *See* Rule 2–01(f)(13) of Regulation S–X, 17 CFR 210.1–01(f)(13).

[3] *See* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000) (describing these terms in the context of the rule's definition of ''close family members'').

speak to, the Board, and are not the signatory of any written correspondence or communication to the Board.

The Board added a note to this subsection that clarifies that participating in the financial reporting process as an officer or director of an issuer or participating in an audit or an issuer does not, by itself, constitute practice before the Board.

Professional Staff or Professional Staff of the Board

EC2(g) defines the terms ''professional staff'' or ''professional staff of the Board'' as those persons who are employed by the Board and who are exempt from minimum wage and overtime provisions under Federal law.

Staff or Staff of the Board

EC2(h) defines the terms ''staff'' or ''staff of the Board'' as those persons who are employed by the Board.

EC3. General Principles

EC3 provides broad principles designed to maintain the highest standards of ethical conduct among Board members and staff, and to provide the public with confidence in the objectivity of the Board's decisions by seeking to avoid both actual and perceived conflicts of interest among Board members and staff. The three subparagraphs to paragraph (a) are intended to guide Board members and staff when a situation is not covered by the Code's specific standards.

EC3(a)(1) instructs Board members and staff to at all times be mindful of their responsibilities to the Board, the sensitivity of their positions, and the need for public confidence in the objectivity and deliberative process of the Board. EC3(a)(2) instructs Board members and staff to take great care to conduct themselves and all of their activities in such a manner so that their personal investments or other personal activities will not affect their professional independence or objectivity, or otherwise hinder the interests or reputation of the Board. EC3(a)(3) further instructs Board members and staff to recognize that the degree of public confidence in the function and activities of the Board depends heavily upon the observance of both the letter and spirit of this Code.

EC3(b) prohibits Board members and staff from acting in a manner that creates or reasonably results in the appearance of certain situations described in subparagraphs (1) through (5),[4] regardless of whether specifically prohibited by this Code.

The Board, or its Ethics Officer, may issue interpretative guidance relating to these principles.

One commenter indicated that he did not believe the Board's general principles provided any meaningful guidance to the Board or its staff. Recognizing that the general principles are meant to be broad enough to guide the conduct of members and staff in those situations in which a specific provision of the Code does not apply, the Board concluded that its general principles are sufficient and has not changed them.

EC4. Financial and Employment Interests

EC4 limits Board members and/or professional staff from certain financial and employment interests. Subparagraph (a) prohibits Board members and professional staff from being owed or owing any financial or other obligation to a former employer, business partner, client or publisher, with limited exceptions. The Board extended this prohibition to a Board member or professional staff's publisher.

EC4(a)(1) restricts Board members and professional staff from being owed any financial or other obligation, except those items contained in subparagraphs (A) through (F).[5]

One commenter requested that the Board define what it meant by ''routine banking and other routine commercial relationships'' as identified in EC4(a)(1)(A) and EC4(a)(2)(A). The Board will apply this exception to those arrangements that are akin to those generally available to the public at large through arms-length negotiations. The Board does not believe that the exception requires further refinement in the Code.

EC4(a)(1)(C) excepts from the general prohibition benefits under a bona fide pension, retirement, group life, health or accident insurance, or other employee welfare or benefit plan maintained by a former employer and related to prior services for the former employer, business partner or client. This rule does not prevent Board members or staff from receiving ongoing bona fide pension payments, even if the funding for those payments is tied to the profitability of the former employer. Board members and professional staff, however, remain subject to EC8. As discussed in more detail below, EC8(a) requires Board members and professional staff to disclose circumstances that would lead a reasonable person to believe that the Board or staff member may have a financial interest that might affect or reasonably create the appearance of affecting his or her independence or objectivity and to recuse himself or herself from participating in functions or activities involving or affecting the financial interest. If a Board or staff member were receiving pension payments, the funding for which is tied to the profitability of a former employer, that would constitute the type of financial interest requiring disclosure and recusal from matters involving that former employer pursuant to EC8(a).[6]

EC4(a)(1)(D) and (E) each excepts payments and the like for prior service. EC4(a)(1)(D) excepts profit-sharing, stock bonus or other payments related to prior services for the former employer, business partner or client, while EC4(a)(1)(E) excepts royalties or other like payments with respect to writings and recordings completed prior to commencement of employment with the Board.

EC4(a)(2) restricts Board members and professional staff from owing any financial or other obligation, except those items contained in subparagraphs (A) through (D).[7]

EC4(b) reiterates the statutory constraints on Board members receiving profits of, or payments from, public accounting firms. As proposed, EC4(b) was limited to Board members only. Based on public comment, this subparagraph was extended to spouses, spousal equivalents, and dependents of Board members.

EC5. Investments

EC5 addresses the issue of investments by Board members and staff and their spouses, spousal equivalents, and dependents.

EC5(a) provides that there are no prohibited investments by Board members, staff and their spouses, spousal equivalents, and dependents, except that subparagraph (1) restricts Board members and professional staff from having any financial interest in a public accounting firm.[8]

[4] The situations described in these subparagraphs are self-explanatory and are not discussed below.

[5] Certain excepted items under this subparagraph are self-explanatory and are not discussed below.

[6] EC8 also generally restricts Board members and staff from participating in making a decision which is reasonably likely to have a material effect on their former employer for one year after joining the Board.

[7] The items excepted under this subparagraph are self-explanatory and are not discussed below.

[8] The Board revised EC5(a) to not cover Board members and professional staff's spouses, spousal

Continued

EC5(b) instructs Board members and professional staff to at all times be mindful of their responsibilities to the Board and to avoid personal financial activities which might affect or reasonably create the appearance of affecting their independence or objectivity.

EC5(c) instructs Board members and staff to at all times be mindful that, in the course and scope of their employment activities, they may obtain knowledge of confidential, non-public information which, if disclosed, might affect the value of particular securities or investments and places restrictions on the disclosure and use of non-public information. Subparagraph (1) prohibits the dissemination or disclosure of any confidential, non-public information obtained by virtue of their position with the Board, whether that information may be considered to be ''material'' under the securities laws or not and subparagraph (2) restricts the use of such information for the financial gain of themselves or others.

EC5(d) was added at the suggestion of several commenters and requires that Board members and professional staff annually disclose their holdings in securities of issuers, including exchange-traded options and futures. Disclosure statements must be filed with the Ethics Officer. In addition, Board members' disclosure statements will be made available to the public.

For initial disclosures, newly appointed members or newly hired professional staff have 60 days from the date of commencement of service with the Board to complete and file the necessary statements. Current Board members and professional staff have 60 days from the effective date of the Code to file the necessary statements.

For subsequent disclosures, Board members and professional staff shall file the necessary statements on May 1, commencing the first year following the initial disclosure.

The form and content of the disclosure shall be included in the Board's ethics manual and will require disclosure of investments based upon categories—such as individual operating company holdings, mutual fund holdings, index fund holdings, exchange-traded options holdings, stock futures holdings and other holdings the Board deems relevant.

It is currently contemplated that all values will be disclosed in ranges, and based on market value. For example, a Board member or professional staff member would be required to identify whether their assets in mutual funds were between two fixed dollar values—$0–$50,000, $50,000–$100,000, etc.

It is further contemplated that broad based classes of investments, such as mutual fund holdings, could be disclosed in lump sum (*i.e.*, all mutual fund holdings could be aggregated for convenience), while individual holdings (equities, options and futures) would be required to be specifically identified, along with the range of valuation for each issue.

EC6. Outside Activities

EC6 governs the participation in outside activities for Board members and staff.

EC6(a) provides that no member of the Board may undertake any employment or other activity for compensation outside of service to the Board.

EC6(b) dictates that staff of the Board may only undertake other employment or other activity for compensation with the express and specific approval of the Board or such person to whom the Board may delegate such approval authority. As with other delegations of Board functions, section 101(g)(2) of the Act will define the parameters of the delegation.

While EC6(b) applies to all paid outside activities, the Board envisions that the Board's Ethics Officer or other person to whom the Board delegates approval authority will recommend approval on a case-by-case basis, or, where appropriate, a ''blanket'' basis for those activities unrelated to the Board's oversight and which would not otherwise impair staff independence or hinder the reputation of the Board.

EC6(c) prohibits any outside activities by Board members and staff, whether or not for compensation, that violate certain general principles that are specified in subparagraphs (1) through (3) of EC6(c).[9]

EC7. Gifts, Reimbursements, Honoraria and Other Things of Value

EC7 places restrictions on the receipt of gifts, honoraria, reimbursement for travel and other things of value by Board members and professional staff. EC7(a) provides that no Board member or professional staff shall, directly or indirectly, solicit or accept any gift, reimbursement, honoraria or anything of monetary value from any source, under the circumstances described in subparagraphs (1) and (2).[10]

EC7(b) describes the circumstances under which, and from whom, travel reimbursement may be paid. Subparagraph (1) limits such reimbursements for travel that is in direct connection with the employee's participation in an educational forum. Subparagraph (2) further limits reimbursement to educational forums that are principally sponsored by and the travel-related expenses are paid or reimbursed by a federal, state or local governmental body or an association of such bodies, an accredited institution of higher learning, an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code (provided such organization is not principally funded from one or more public accounting firms or issuers), or equivalent institutions outside the United States.

At the request of a commenter, the Board added association of governmental bodies to the list of organizations from which travel expenses may be reimbursed. The Board also added equivalent institutions outside the United States to make clear that this provision of its Ethics Code applies equally to non-U.S. entities.

EC8. Disqualification

EC8 contains provisions requiring the disclosure, recusal and disqualification from participation in certain matters by Board members or professional staff.

As referenced above in EC4, EC8(a) provides that if a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she (or his or her spouse, spousal equivalent, and dependents) may have a financial interest or similar relationship which might affect (or reasonably create the appearance of affecting) his or her independence or objectivity, then he or she must, at the earliest possible date, take the actions described in subparagraphs (1) and (2). Subparagraph (1) requires disclosure of such circumstances and facts. Subparagraph (2) instructs the Board member or professional staff to recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship.

At the suggestion of several commenters, the Board imposed a

equivalents and dependents. Under EC8(a), if a Board member or professional staff's spouse, spousal equivalent, or dependent had a financial interest in a public accounting firm, that interest would have to be disclosed and the Board or staff member would be recused from participating in any matter involving that public accounting firm. In addition, Board member spouses, spousal equivalents, and dependents are subject to the restrictions on payments from public accounting firms in EC4(b).

[9] The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

[10] The circumstances described in these subparagraphs are self-explanatory and are not discussed below.

''reasonable person'' standard to use to determine whether a financial relationship requires disclosure and disqualification.

The Board also added two clarifying notes following EC8(a). The first note clarifies that for the purposes of applying this provision to members of an advisory group, those members shall not be considered to lack independence or objectivity with regard to advisory group matters merely because they (or their employer, business partners or clients) are subject to the direct or indirect oversight of the Board. The second note advises non-professional staff to seek the counsel of the Ethics Officer if they face circumstances concerning financial relationships that may affect their ability to perform their functions.

EC8(b) indicates that for a member of the Board, disclosure shall be made to all other members of the Board. For professional staff of the Board, disclosure shall be made to the Board Chair, or the person or persons designated by the Chair (*e.g.*, the Ethics Officer).

EC8(c) restricts Board members and professional staff for a period of 12 months commencing on date of appointment or employment from participating in the making of a decision which is reasonably likely to have a material effect on the Board or professional staff member's former employer, business partner or client, when such prior employment terminated within five years from the date of appointment or employment with the Board.

Several commenters requested that the Board clarify that broad policy decisions are not ''indirect effects.'' In response to this suggestion the Board added language that indicates that participating in the making of a decision that affects a former employer, business partner or client to the same degree as similarly situated people or business organizations, does not constitute an ''indirect'' effect. This is meant to cover matters of general applicability to a broad class of persons.

EC9. Non-Public Information

EC9 restricts Board members and staff from disseminating or disclosing certain information. Subparagraph (a) provides that unless authorized by the Board, no Board member or staff shall disseminate or otherwise disclose any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly and subparagraph (b) provides that the restriction in EC9 shall continue in effect after the termination of employment or Board membership. As proposed, the restriction on disclosure of non-public information only applied for five years after the Board or professional staff member left the Board. Due to the importance of preserving confidential information, the Board decided to strengthen this provision by extending its application indefinitely.

EC10. Speaking for the Board

EC10 provides that, unless authorized to speak on behalf of the Board, Board members and professional staff shall include a disclaimer for any private publication or public statement by indicating that the views expressed are those of the author or speaker and do not necessarily reflect the view of the Board or other Board members or staff.

EC11. Ethics Officer

EC11 directs the Board to designate an Ethics Officer with the power and responsibilities identified in subparagraphs (a) through (c).[11]

EC12. Post-Employment Restrictions

EC12 imposes certain post-employment restrictions on Board members and professional staff. Subparagraph (a)(1) prohibits Board members and professional staff from negotiating prospective employment with a public accounting firm, without first disclosing (pursuant to the procedures in section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

Subparagraph (a)(2) was added at the request of several commenters and defines ''negotiating prospective employment'' to mean participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers, or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute ''negotiating prospective employment.'' This additional language is consistent with Regulations Concerning Post Employment Conflicts of Interest (5 CFR 2637.101 *et seq.*), to which federal government employees are subject.

Subparagraph (b) contains two restrictions on former Board members and professional staff. First, it restricts Board members and professional staff from practicing before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership. Second, the Board added EC 12(b)(2), which provides that former Board members and professional staff shall not practice before the Board, or the Commission with respect to Board-related matters, on a particular matter in which the Board member or professional staff participated personally and substantially as a Board or staff member and which involved a specific party or parties at the time of such participation. The Board based this restriction on the comparable restriction applicable to federal government employees in 18 U.S.C. 207(a). Since this rule is limited to particular matters, it would not cover matters of general applicability, such as rulemakings the person participated in while at the Board.

EC13. Waiver

EC13 establishes a mechanism for the Board to waive any provision of the Ethics Code, provided the granting of the waiver would not otherwise be prohibited by law. EC13 provides that waivers must be requested in writing by the Board member or staff, and evaluated by the Ethics Officer and that the Board will only grant waiver requests after a finding that the waiver would not otherwise hinder the interests or reputation of the Board. Subject to section 101(g)(2) of the Act, the Board may delegate approval authority as to staff requests.

Several commenters suggested that the Board disclose waivers of its Ethics Code. In response to these comments, the Board decided to make waivers available to the public, subject to withholding information that would constitute a clearly unwarranted invasion of personal privacy.[12] The Board believes that this approach provides for transparency of the Board's administration of its Ethics Code, while still protecting individuals' privacy interests.

EC14. Certification

EC14 provides that Board members, staff, and designated contractors and consultants agree to comply with this Code at the commencement of their service with the Board and shall annually certify in writing their continuing compliance with it. The Board modified this provision to also apply to designated contractors and

[11] The powers and responsibilities described in these subparagraphs are self-explanatory and are not discussed below.

[12] This standard is based on, and consistent with, one of the exemptions to the Freedom of Information Act. *See* 5 U.S.C. 552(b)(6).

consultants after careful consideration of recommendations by commenters.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Board's Statement on Comments on the Proposed Rules Received from Members, Participants or Others

The Board released its proposed Code for public comment on April 18, 2003. *See* PCAOB Release No. 2003–004 (April 18, 2003). The Board received eight written comment letters on its proposal. A copy of PCAOB Release No. 2003–004 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *www.pcaobus.org.*

The Board has carefully considered all comments it has received. In response to the written comments received, the Board clarified and modified certain aspects of its proposed Code. Specifically, the Board made 12 principal changes to its proposal. First, the Board revised its proposal to clarify that the Code's application to ''designated contractors and consultants'' will require a three step process: first, there must be a contract for services; second, the Board (or its designate) must determine that the Code should be applied to the contractor, in whole or in part; and last, the contract must contain specific provisions incorporating those portions of this Code applicable to the contractor. Second, the Board eliminated the definition of ''immediate family'' and clarified which provisions of the Ethics Code apply to a Board or staff member's spouse, spousal equivalent, and dependents. Third, the Board decided to impose the obligation upon Board members and professional staff to disclose their personal investments, and those of their spouses, spousal equivalents and dependents, in the securities of issuers.

Fourth, the Board decided to expand the narrow list of sponsors who are permitted to pay for Board-related travel to include associations of governmental (federal, state or local) bodies and non-U.S. institutions equivalent to the permissible domestic sponsors. Fifth, the Board created a ''reasonable person'' standard for Board members and professional staff to use to determine whether a financial relationship requires disclosure and disqualification. Sixth, the Board clarified that, in the context of members of an advisory group,[13] independence and objectivity are not *per se* impaired because the group member's employer, business client or partner is subject to the Board's direct or indirect oversight.

Seventh, the revised Code clarifies that Board members and professional staff are not required to disqualify themselves from participating in making or developing broad policies or procedures which may have some effect on a former employer, business partner or client, so long as the policy or procedure effects all similarly situated people and organizations to the same degree. Eighth, the Board chose to define those circumstances which trigger (and do not trigger) the requirement for Board members and professional staff to internally disclose when they are ''negotiating prospective employment'' with a public accounting firm or issue.[14] Ninth, the Board required designated contractors and consultants to certify compliance with the Code (as applied to them) to the same extent as Board members and staff.

Tenth, the Board added a restriction on former Board members and professional staff participating in a matter they personally and substantially participated in while at the Board. Eleventh, the Board extended indefinitely the restriction on former Board members and professional staff from disclosing non-public Board information. Twelfth, and finally, the Board chose to make publicly available information on waivers of the Ethics Code. Additional discussion of the Board's response to these and other comments it received is included in section II(a)(A) above.

III. Date of Effectiveness of the Proposed Rules 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 Board consents the Commission will:

(a) By order approve such proposed rules; or

(b) Institute proceedings to determine whether the proposed rules 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 rules are consistent with the requirements of Title I of 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 rules that are filed with the Commission, and all written communications relating to the proposed rules 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 PCAOB. All submissions should refer to File No. PCAOB–2003–04 and should be submitted by October 17, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24382 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

[13] See PCAOB Release No. 2003–009, and PCAOB Rule 3700 (regarding advisory groups).

[14] When this disclosure is triggered, Board members and professional staff must also disqualify themselves from participating in decisions directly affecting the prospective employer.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48505; File No. SR–ISE–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Contrary Exercise Advices

September 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 August 12, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') submitted to the Securities and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Exchange amended its proposal on September 9, 2003.[3] The Exchange filed the proposed rule change, as amended, under paragraph (f)(6) of Rule 19b–4 under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 1100: (i) To simplify the manner in which a contrary exercise advice (''CEA'') is submitted to the Exchange;[5] (ii) to extend by one hour the cut-off time for Members to submit CEAs to the Exchange; and (iii) to add new paragraphs (g) and (h) for the purpose of establishing different cut-off times for options holders to decide whether to exercise or not exercise an expiring option and for members to submit CEAs based on a modified trading session or due to ''unusual circumstances.'' Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deleted text is [bracketed].

* * * * *

Rule 1100. Exercise of Options Contracts

(a) Subject to the restrictions set forth in Rule 413 (Exercise Limits) and to such restrictions as may be imposed pursuant to Rule 417 (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Member in whose account such options contract is carried with the Clearing Corporation. *Members may establish fixed procedures as to the latest time they will accept exercise instructions from customers.*

[(b) The exercise cut-off time for all noncash-settled options shall be 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date. This is the latest time at which an exercise instruction for expiring noncash-settled options positions may be:

(1) prepared by a Clearing Member for positions in its proprietary trading account;

(2) submitted to a Clearing Member by a market maker or broker for positions in the market maker's account or the broker's error account; or

(3) accepted by a Member from any customer for its positions in the customer's account.]

(b) Special procedures apply to the exercise of equity options on the last business day before their expiration (''expiring options''). Unless waived by the Clearing Corporation, expiring options are subject to the Exercise-by-Exception (''Ex-by-Ex'') procedure under Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to the Rules of the Clearing Corporation, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:

(1) take no action and allow exercise determinations to be made in accordance with the Clearing Corporation's Ex-by-Ex procedure where applicable; or

(2) submit a ''Contrary Exercise Advice'' to the Exchange by the deadline specified in paragraph (c) below. A Contrary Exercise Advice is a communication either: (A) to not exercise an option that would be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure, or (B) to exercise an option that would not be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure. A Contrary Exercise Advice may be submitted by a Member by using the Exchange's Contrary Exercise Advice Form, the Clearing Corporation's ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is a member and where the option is listed, or such other method as the Exchange may prescribe. A Contrary Exercise Advice may be canceled by filing an ''Advice Cancel'' with the Exchange or resubmitted at any time up to the submission cut-off times specified below.

(c) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, Members may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice. For non-customer accounts, Members may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice if such Member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Consistent with Supplemental Material .03, Members are required to submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Members do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

(d) If the Clearing Corporation has waived the Ex-by-Ex procedure for an options class, Members must either:

(1) submit to the Exchange, a Contrary Exercise Advice, in a manner specified by the Exchange, within the time limits specified in paragraph (c) above if the holder intends to exercise the option; or

(2) take no action and allow the option to expire without being exercised.

In cases where the Ex-by-Ex procedure has been waived, the Rules of the Clearing Corporation require that Members wishing to exercise such options must submit an affirmative Exercise Notice to the Clearing Corporation, whether or not a Contrary Exercise Advice has been filed with the Exchange.

(e) A Member that has accepted the responsibility to indicate final exercise decisions on behalf of another Member or non-member broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such Member may establish a processing cut-off time prior to the Exchange's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each Member that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 6, 2003 (''Amendment No. 1''). In Amendment No. 1, the ISE added footnotes to clarify terminology used in its discussion and made technical corrections to its rule text.

[4] 17 CFR 240.19b–4(f)(6).

[5] The term CEA as used in the filing may also include ''Advice Cancels.'' Advice Cancels are documents used to cancel CEAs. *See* Amendment No. 1, *supra* note 3.

are indicated in a timely manner to such broker-dealer.

[(c)] *(f)* Notwithstanding the foregoing, Members may [receive and Members may submit exercise instructions] *make final exercise decisions* after the exercise cut-off time but prior to expiration *without having submitted a Contrary Exercise Advice* in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cut-off time shall be maintained by the Member and a copy thereof shall be [promptly] filed with the Exchange *no later than 12:00 noon Eastern Time on the first business day following the respective expiration.* An exercise [instruction] decision after the exercise cut-off *time* may be [received or submitted] *made*:

(1) in order to remedy mistakes or errors made in good faith; *or*

(2) where exceptional circumstances [relating to a customer's or associated person's ability to communicate exercise instructions to the Member (or the Member's ability to receive exercise instructions) prior to such cut-off time warrant such action] *have restricted an option holder's ability to inform a Member of a decision regarding exercise, or a Member's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the Member seeking to rely on such exceptions.*

(g) In the event the Exchange provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Rule 1100(c). However, Members may deliver a Contrary Exercise Advice or Advice Cancel to the Exchange within 2 hours 28 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. Eastern Time deadline found in Rule 1100(c) for customer accounts and non-customer accounts where such Member employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, Members that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Rule 1100(c).

(h) Modification of cut-off time.

(1) The Exchange may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances. For purposes of this subparagraph (h)(1), an ''unusual circumstance'' includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

(2) The Exchange with at least one (1) business day prior advance notice, by 12:00 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading. For purposes of this subparagraph (h)(2), an ''unusual circumstance'' includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

[(d)] *(i)* Submitting or preparing an exercise instruction, *Contrary Exercise Advice or Advice Cancel* after the *applicable* exercise cut-off time in any expiring options on the basis of material information released after the cut-off time is activity inconsistent with just and equitable principles of trade.

[(e) For purposes of this Rule with respect to any Member, the word ''customer'' shall mean every person or organization other than a market maker, broker or the Member itself. The term ''exercise instruction,'' with respect to a market maker, broker and Clearing Member, shall also mean a notice either not to exercise an options position which would otherwise be exercised, or to exercise an options position which would otherwise not be exercised, by operation of the Rules of the Clearing Corporation, or to modify or withdraw a previously submitted instruction. All exercise instructions must be time stamped at the time they are prepared.]

[(f) No Member may prepare, time stamp or submit an exercise instruction prior to the purchase of the exercised contracts if the Member knew or had reason to know that the contracts had not yet been purchased.]

[(g) Clearing Members must follow the procedures of the Clearing Corporation when exercising expiring noncash-settled equity options contracts. Members must also follow the procedures set forth below with respect to the exercise of noncash-settled equity options contracts which would otherwise not be exercised, or the nonexercise of contracts which otherwise would be exercised, by operation of Clearing Corporation Rule 804:

(1) For all contracts so exercised or not exercised, a ''contrary exercise advice,'' must be delivered by the market maker, broker or clearing firm, as applicable, in such form or manner prescribed by the Exchange no later than 5:30 p.m. Eastern Time.

(2) Subsequent to the delivery of a ''contrary exercise advice,'' should the market maker, broker, customer or firm determine to act other than as reflected on the original advice form, the market maker, broker, or clearing firm, as applicable, must also deliver an ''advice cancel,'' in such form or manner prescribed by the Exchange no later than 5:30 p.m. Eastern Time.

(3) Members shall properly communicate to the Exchange final exercise decisions in respect of positions for which they are responsible.

(4) The preparation, time stamping or submission of a ''contrary exercise advice'' prior to the purchase of the contracts to be exercised or not exercised shall be deemed a violation of this Rule.

(5) All of the above procedures of this paragraph (g) are in full force and effect whether or not the Clearing Corporation waives the exercise by exception provisions of its Rule 804; in the event of such waiver the procedures of this paragraph shall be followed as if such provisions of Clearing Corporation Rule 804 were in full force and effect. The Clearing Corporation rules may require the submission of an affirmative exercise notice even in circumstances where a contrary exercise advice is not submitted.]

[(6)] *(j)* The failure of any Member to follow the procedures in this [paragraph (g)] *Rule 1100* may result in the assessment of a fine, which may include

but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.

Supplemental Material to Rule 1100

.01 For purposes of this Rule 1100, the terms ''customer account'' and ''non-customer account'' have the same meaning as defined in the Clearing Corporation By-Laws Article I(C)(28) and Article I(N)(2), respectively.

.02 Each Member shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda shall be subject to the requirements of SEC Rule 17a–4(b).

.03 Although the deadline for all option holders to make a final decision to exercise or not exercise is 5:30 p.m. Eastern Time, the deadline for the submission of the Contrary Exercise Advice in the case of non-customer accounts will depend on the manner of the decision to exercise or not exercise.

(i) For electronic time stamp submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Members must be received by the Exchange by 6:30 p.m. Eastern Time.

(ii) For manual submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Members must be received by the Exchange by 5:30 p.m. Eastern Time.

.04 Each Member shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

.05 The filing of a Contrary Exercise Advice required by this Rule does not serve to substitute as the effective notice to the Clearing Corporation for the exercise or non-exercise of expiring options.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to simplify the manner in which a CEA is submitted to the Exchange and to extend the cut-off time for submitting CEAs for customer accounts. The Exchange represents that this proposed rule change, as amended, corresponds to an American Stock Exchange LLC (''Amex'') rule change recently approved by the Commission.[6] The ISE is proposing to modify ISE Rule 1100 to mirror the changes to Amex Rule 980.

The Options Clearing Corporation (''OCC'') has an established procedure, pursuant to OCC Rule 805, known as ''Exercise-by-Exception'' or ''Ex-by-Ex'' that provides for the automatic exercise of certain options that are in-the-money by a specified amount. Under the Ex-by-Ex process, option holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need to take no further action.[7]

However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than the Ex-by-Ex procedure must file a CEA with the ISE in accordance with ISE Rule 1100 and instruct OCC of their ''contrary intention.''[8] The Exchange states that the rule is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a CEA. Members satisfy the filing requirement by submitting a CEA form directly to the ISE or by electronically submitting the CEA through OCC's electronic communications system.

The Exchange states that one of the primary goals of ISE Rule 1100 is to maintain a level playing field between holders of long and short positions in expiring equity options. The ISE believes that, after trading has ended on the final trading day before expiration, persons who are short the option have no way to close out their short positions. To put option holders on equal footing, ISE Rule 1100 attempts to minimize the time period in which a holder can exercise an equity option after the close of trading on the last business day prior to expiration.[9]

The current exercise cut-off time for an option holder to decide whether or not to exercise an equity option is 5:30 p.m. Eastern Time (''ET'') on the business day immediately prior to the expiration date.[10] Under the proposed rule change, the exercise cut-off time established in ISE Rule 1100(c) will not change except in cases of a modified trading session or due to ''unusual circumstances.'' Current ISE Rule 1100 imposes a uniform 5:30 p.m. ET cut-off time for the submission of CEAs for all accounts without differentiation between customer and non-customer accounts.

The Exchange believes that this proposed rule change is necessary to address a concern that the existing deadline for submitting CEAs is problematic for customer accounts due to logistical difficulties in receiving customer exercise instructions and processing them through retail branch systems and back offices before submitting them to the Exchange.[11] Therefore, the Exchange proposes to adopt a cut-off time of 6:30 p.m. ET for Members to submit CEAs for customer accounts. The Exchange also proposes to allow Members to submit CEAs for non-customer accounts by 6:30 p.m. ET provided such Member employs an electronic procedure with time stamp recording for the submission of exercise instructions by options holders.[12] In

[6] *See* Securities Exchange Act Release No. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR–Amex–2001–92).

[7] ''In-the-money'' for a call option occurs if the current market value of the underlying security is above the exercise price of the option. For put options, ''in-the-money'' means the current value of the underlying security is below the exercise price of the option. *See* Amendment No. 1, *supra* note 3.

[8] A CEA may be canceled by filing an ''Advice Cancel'' with the Exchange at any time up to the submission cut-off deadline specified in proposed amended ISE Rule 1100(c). *See* Amendment No. 1, *supra* note 3.

[9] Expiration, commonly known as ''Expiration Friday,'' is generally the last business day prior to the expiration of an option contract.

[10] The ''expiration date'' of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such options. *See* OCC By-Laws Article I(E)(16). *See also* Amendment No. 1, *supra* note 3.

[11] A ''customer account'' is defined in OCC By-Laws Article I(C)(28) as an account of a Clearing Member which is confined to Exchange Transactions cleared and positions carried by the Clearing Member on behalf of its securities customers, other than those transactions of market-makers which are cleared through a market-markers account. OCC By-Laws define a ''securities customer'' as a person having a securities account at a broker or dealer other than a non-customer of such broker or dealer. *See* OCC By-Laws Article I(S)(1). *See also* Amendment No. 1, *supra* note 3.

[12] A ''non-customer account'' generally means a person that is not a customer of a broker or dealer defined in Rule 8c-1 and 15c2–1 under the Act. *See* OCC By-Laws Article I(N)(2). *See also* Amendment No. 1, *supra* note 3.

those cases where Members do not employ an electronic submission procedure for the submission of exercise instructions, CEAs for non-customer accounts must be submitted to the Exchange by 5:30 p.m. ET. The different CEA submission deadlines are set forth in proposed ISE Rule 1100(c) and Supplemental Material .03.

Although most firms have electronic submission procedures, the Exchange is concerned that those firms that manually submit CEAs could have an opportunity to improperly extend the 5:30 p.m. ET deadline for options holders to submit their exercise instructions. This concern on the part of the Exchange is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

Accordingly, in the case of non-customer accounts, the Exchange proposes to limit the 6:30 p.m. ET deadline for submitting CEAs to those Members that have an electronic submission procedure for option holders to communicate their decisions whether to exercise or not exercise an option. In connection with the use of an electronic submission procedure by Members, the Exchange proposes the addition of new Supplemental Material .04 to ISE Rule 1100 to require Members employing electronic submissions to establish procedures to secure time stamps in connection with their electronic systems.

OCC on occasion will suspend the use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted or if accurate price data is unavailable for the determination of closing prices. When this occurs and there is no automatic exercise, all options contract holders must send an exercise notice to OCC if they want to exercise, regardless of whether the option is in or out-of-the-money. Currently, when OCC suspends its Ex-by-Ex procedure for an option class, ISE Rule 1100(g)(5) requires the submission of a CEA. Thus, when OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price OCC did not feel comfortable using). Option holders then must determine whether a CEA needs to be submitted to the Exchange evidencing the intention to exercise or not exercise.

The Exchange proposes to eliminate the requirement that a CEA be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by Ex procedure for that options class. As a result, when the Ex-by-Ex procedure has been suspended, submission of CEAs to the Exchange will be required only when the options holder wants to exercise the option contract.

The proposed rule change would also permit the Exchange to establish different cut-off times as an exception to amended ISE Rule 1100(c) to address situations where the Exchange has advance prior knowledge or warning of a modified trading session at expiration, or in the case of ''unusual circumstances.''

Specifically, proposed ISE Rule 1100(g) would apply when a different or modified close of trading is announced due to a market-wide event. In such cases, the Exchange would have forewarning of the event and would be required to provide notice of a change in cut-off times by 5:30 p.m. ET on the business day prior to the last trading day before expiration. For example, if the day after Thanksgiving is the last trading day prior to expiration with a close of trading of 1 p.m. ET, then the Exchange would, with prior notice by 5:30 ET on the Wednesday before Thanksgiving, be able to establish the cut-off time for option holders to decide whether to exercise or not exercise expiring options to 1 hour 28 minutes after the close of trading. With respect to the submission of CEAs by Members, the cut-off time would be 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the Member employs an electronic procedure with time stamp for the submission of exercise instructions. Members that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 28 minutes after the close of trading for its non-customer accounts. Accordingly, the normal exercise cut-off time would not apply and, similar to amended ISE Rule 1100(c), the deadline for submitting CEAs to the Exchange for non-customer accounts would depend on the use of an electronic submission procedure for the submission of exercise instructions.

Proposed ISE Rule 1100(h)(1) would permit the Exchange to extend the cut-off time periods for options holders to decide whether to exercise or not exercise expiring options, as well as, for Members to submit CEAs due to unusual circumstances. Situations that may arise that are deemed to be ''unusual circumstances'' are set forth in proposed ISE Rule 1100(h)(1). An ''unusual circumstance'' for purposes of proposed paragraph (h)(1) includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

Proposed ISE Rule 1100(h)(2) would permit the Exchange, with one (1) business day prior advance notice by 12 noon ET, to establish a cut-off time for option holders to decide whether to exercise or not exercise expiring options as well as for Members to submit CEAs. The reduced cut-off time under this new paragraph for both exercise decisions and CEA submissions may not occur before the close of trading. The primary purpose of this proposed paragraph (h)(2) is to permit the Exchange to reduce cut-off times because of an ''unusual circumstance,'' such as a significant news event occurring after the close. Proposed ISE Rule 1100(h)(2) provides that an ''unusual circumstance'' is a significant news announcement concerning the underlying security of an option contract that is scheduled to be released after the close on the last trading day prior to expiration. For example, a decision on whether a particular merger will be approved or whether a new product will receive regulatory approval after the close of trading would justify a reduced cut-off time so that persons holding short positions are not prejudiced by being unable to close out their positions. The Exchange believes that this would maintain a level playing field between persons holding long and short positions in expiring options.

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with section 6(b) of the Act in general [13] and furthers the objectives of section 6(b)(5) in particular,[14] because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change, as amended. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action in consistent with the protection of investors and the public interest. The ISE has requested that the Commission accelerate the implementation of the proposed rule change to take effect prior to the thirty days specified in Rule 19b–4(f)(6)(iii)[21] so that members will be subject to uniform CEA rules among the options exchanges.

The Commission believes that waiving the thirty-day operative date is consistent with the protection of investors and the public interest.[22] Accelerating the operative date will allow the ISE to immediately implement rules similar to ones already in place at the Amex,[23] and will simplify and clarify the process by which Members accept exercise decisions from options holders and submit such decisions to the Exchange. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such proposed 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.[24]

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 ISE. All submissions should refer to File No. SR–ISE–2003–20 and should be submitted by October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24378 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.15 U.S.C. 78c(f).

[23] *See supra* note .

[24] For purposes of calculating the sixty-day abrogation period, the Commission considers the period to commence on September 9, 2003, the date at which the Exchange filed Amendment No. 1.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48514; File No. ISE–2003–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Extension of the Pilot Program for Quotation Spreads

September 22, 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 September 22, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to extend until January 31, 2004, a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be $5, regardless of the price of the bid (''Pilot Program''). The ISE proposes no substantive changes to the Pilot Program other than extending its operation through January 31, 2004. Pursuant to Rule 19b–4(f)(6) under the Act, the ISE requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii).[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE's rules contain maximum quotation spread requirements that vary from $.25 to $1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to amend Supplementary Material .01 to ISE Rule 803, ''Obligations of Market Makers,'' to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be $5, regardless of the price of the bid.[5] The Pilot Program expires on September 19, 2003. As required by the Pilot Program Approval Order, the ISE has submitted to the Commission a report detailing the ISE's experience with the Pilot Program.

The ISE believes that the Pilot Program has been successful, and the ISE intends to file a proposal with the Commission to make the quote spread Pilot Program permanent and to apply it to all ISE listed equity options. The purpose of the current proposal is to extend the Pilot Program in its present form until January 31, 2004, while the Commission reviews the ISE's Pilot Program report and considers the ISE's proposal to make the Pilot Program permanent.

2. Statutory Basis

According to the ISE, the statutory basis for the proposal is the requirement under section 6(b)(5) of the Act[6] that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change imposes 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 ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through January 31, 2004. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–21 and should be submitted by October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24380 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR–ISE–2001–15) (''Pilot Program Approval Order'').

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48503; File No. SR–NASD–2002–108]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 4 and 5 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Business Continuity Plans and Emergency Contact Information

September 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the National Association of Securities Dealers, Inc. (''NASD''), on August 7, 2002, filed with the Securities and Exchange Commission (''Commission''),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

a proposed rule change to require its members to establish and maintain business continuity plans. The Commission published the original proposal in the **Federal Register** on September 9, 2002.[3] In response to comments received, the NASD submitted amendments to the proposed rule change on December 12, 2002;[4] January 8, 2003;[5] and February 19, 2003.[6] The Commission published Amendment Nos. 1, 2, and 3 for comment in the **Federal Register** on March 10, 2003.[7] In response to additional comments received, the NASD submitted Amendment No. 4 to the proposal on September 4, 2003,[8] and Amendment No. 5 on September 17, 2003.[9] The Commission is publishing this notice of Amendment Nos. 4 and 5 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 NASD is proposing certain amendments to the proposed rule change, which requires member firms to create and maintain business continuity plans and provide the NASD with certain information to be used in the event of future significant business disruptions.[10] Among other things, Amendment No. 4 clarifies that the proposed rule change would not mandate that members stay in business in the event of a significant business disruption. The new amendment also would impose a disclosure requirement on members. In addition, the amendment would require each member to review and, if necessary, update its emergency contact information. Below is the text of the proposed rule change. The base rule text is that proposed in Amendment No. 3. Proposed new language added by Amendment Nos. 4 and 5 is in italics; text deleted by Amendment Nos. 4 and 5 is in brackets.

* * * * *

3500. Emergency Preparedness

3510. Business Continuity Plans

(a) Each member must create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the member to [continue its business in the event of future significant business disruptions] *meet its existing obligations to customers. In addition, such procedures must address the member's existing relationships with other broker-dealers and counter-parties.* The business continuity plan must be made available promptly upon request to NASD staff.

(b) Each member must update its plan in the event of any material change to the member's operations, structure, business or location. Each member must also conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location.

(c) The elements that comprise a business continuity plan are flexible and may be tailored to the size and needs of a member. Each plan, however, must at a minimum, address:

(1) Data back-up and recovery (hard copy and electronic);

(2) All mission critical systems;

(3) Financial and operational assessments;

(4) Alternate communications between customers and the member;

(5) Alternate communications between the member and its employees;

(6) *Critical* [B]*b*usiness constituent*s*, bank*s*, and counter-part*ies*[y impact];

(7) Regulatory reporting; [and]

(8) Communications with regulators*; and*[.]

(9) How the member will assure customers' prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.

Each member must address the above-listed categories to the extent applicable and necessary [to enable the member to continue its business in the event of a future significant business disruption]. If any of the above-listed categories is not applicable, the member's business continuity plan need not address the category. The member's business continuity plan, however, must document the rationale for not including such category in its plan. If a member relies on another entity for any one of the above-listed categories or any mission critical system, the member's business continuity plan must address this relationship.

(d) Members must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review. The member of senior management must also be a registered principal.

(e) Each member must disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. At a minimum, such disclosure must be made in writing to customers at account opening, posted on the member's Internet Web site (if the member maintains a Web site), and mailed to customers upon request.

(f) For purposes of this rule, the following terms shall have the meanings specified below:

(1) ''Mission critical system'' means any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(2) ''Financial and operational assessment'' means a set of written procedures that allows a member to identify changes in its operational, financial, and credit risk exposures.

3520. Emergency Contact Information

(a) Each member shall report to NASD, via such electronic or other means as NASD may require, prescribed emergency contact information for the member. Among other things, the emergency contact information for the member includes designation of two emergency contact persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must promptly update its emergency contact information, via such electronic or other means as NASD may require, in the event of any material change. *Each*

[3] Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 (''Original Notice'').

[4] *See* letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation (''Division''), Commission, dated December 11, 2002 (''Amendment No. 1'').

[5] *See* letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division, Commission, dated January 8, 2003 (''Amendment No. 2'').

[6] *See* letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division, Commission, dated February 19, 2003 (''Amendment No. 3'').

[7] Securities Exchange Act Release No. 47441 (March 4, 2003), 68 FR 11432.

[8] *See* letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division, Commission, dated September 3, 2003 (''Amendment No. 4'').

[9] *See* letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division, Commission, dated September 16, 2003 (''Amendment No. 5'').

[10] A similar rule change has been proposed by the New York Stock Exchange (''NYSE''). *See* Securities Exchange Act Release No. 46443 (August 20, 2002), 67 FR 57264 (September 9, 2002) (original NYSE proposal); Securities Exchange Act Release No. 47584 (March 27, 2003), 68 FR 16334 (September 9, 2002) (Amendment No. 3 to NYSE proposal).

member must review and, if necessary, update its emergency contact information, including designation of two emergency contact persons, within 17 business days after the end of each calendar quarter to ensure the information's accuracy. The member's Executive Representative must conduct such review and any update. Furthermore, members must have adequate controls and procedures to ensure that only the Executive Representative may perform the review and update.

* * * * *

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The NASD's original proposal and the NYSE's proposal elicited comments from three parties.[11] The NASD addressed these comments in Amendment Nos. 1, 2, and 3, which the Commission published for comment in the **Federal Register** on March 10, 2003.[12] The NASD incorporates the interpretations in the Original Notice and **Federal Register** release of March 10, 2003, to the extent that they are consistent with the interpretations contained in this release. The amended proposals of the NASD and NYSE relating to business continuity planning also elicited comments from three parties.[13]

The purpose of Amendment No. 4 is to clarify that the proposed rule change does not mandate that members stay in business in the event of a significant business disruption. This amendment also would require each member to disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption. In addition, the amendment would require each member to review and, if necessary, update its emergency contact information on a quarterly basis. Amendment No. 5 clarifies the implementation date of the proposed rules.

Proposed NASD Rule 3510

• *Requirement that Plans be Reasonably Designed to Enable the Member to Continue its Business*

Proposed NASD Rule 3510(a) would require that members create and maintain business continuity plans. Amendment No. 3 amended the language of the proposed rule to provide that each member's plan be ''reasonably designed to enable the member to continue its business in the event of future significant business disruption.'' As explained in the Original Notice, the NASD intended for proposed NASD Rule 3510 to require that a member not only conduct a planning process to create a written business plan, but also that the resultant plan ensure that member's ability to continue its business in the event of a significant business disruption.

One commenter expressed concern that the language added to proposed NASD Rule 3510(a) would create a new obligation on a member to continue its business after a significant business disruption.[14] This is not the intention of the proposal. The proposal would not deprive a member of its autonomy to choose to cease its operations at any time, provided it does so in a manner consistent with applicable laws and Commission and NASD rules. Nonetheless, to clarify that the rule would not create a new obligation for members to continue their businesses, NASD is amending the proposed rule. Specifically, the proposed rule text stating that ''[s]uch procedures must be reasonably designed to enable the member to continue its business in the event of future significant business disruptions'' is amended to read, ''[s]uch procedures must be reasonably designed to enable the member to meet its existing obligations to customers. In addition, such procedures must address the member's existing relationships with other broker-dealers and counterparties.''

The general principle that firms are not required to remain in business is further recognized in a related amendment that the NASD is proposing to make with respect to the categories that a member's plan must, at a minimum, address. In particular, following discussions with Commission staff and NYSE staff, the NASD is proposing to amend proposed NASD Rule 3510(c) to require a plan to address how a member will assure customers' prompt access to their funds and securities in the event that the member determines it is unable to continue its business.[15] If a member has customers, the member must detail the procedures it would employ to ensure customer access to funds and securities. This new category would help to ensure that if a member were unable to continue its business following a significant business disruption, those customers holding funds or securities through the member would be able to access their funds and/or securities.

• *Requirement to Update Business Continuity Plans*

Proposed NASD Rule 3510(b) states, ''[e]ach member must update its plan in the event of any material change to the member's operations, structure, business or location. Each member must also conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location.'' One commenter suggested that the annual review should be required at the plan component level (either defined by business function or department), rather than the firm level.[16] The NASD continues to believe, however, that each member should annually review the contents of its business continuity plan at the overall firm level. Such a firm-level review would, among other things, help to

[11] One commenter submitted a single letter that addressed both proposals. *See* letter from Melvyn Musson, Edward D. Jones & Co. (''Edward Jones''), to Jonathan G. Katz, Secretary, Commission, dated September 30, 2002. A second commenter submitted two letters that addressed each proposal separately. *See* letters from Jerry W. Klawitter, Securities Industry Association and Bond Market Association (''SIA/BMA''), to Margaret H. McFarland, Deputy Secretary, Commission, dated September 30, 2002. A third commenter submitted a letter that addressed only the NASD proposal. *See* letter from Frances M. Stadler, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated September 30, 2002.

[12] *See supra* note 7. The Commission also published for comment Amendment No. 3 to the NYSE's proposal relating to business continuity planning. *See supra* note 10.

[13] Two commenters responded only to the NASD proposal. *See* letter from Melvyn Musson, Edward Jones, to Jonathan G. Katz, Secretary, Commission, dated March 28, 2003 (''Edward Jones Letter''); letter from Thomas K. Heard, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, Commission, dated March 31, 2003 (''A.G. Edwards Letter''). One commenter, the SIA/BMA, submitted a separate letter in response to each notice. *See* letters from Jerry W. Klawitter, SIA/BMA, to Jonathan G. Katz, Secretary, Commission, dated March 31, 2003 (''SIA/BMA Letter''), and April 24, 2003.

[14] *See* SIA/BMA Letter.

[15] The NYSE also is proposing a substantially similar amendment. *See* Securities Exchange Act Release No. 48502 (September 17, 2003) (Amendment No. 4 to NYSE proposal relating to business continuity planning).

[16] *See* A.G. Edwards Letter.

ensure that the business continuity plan continues to operate effectively as a whole notwithstanding any operational or business changes that may have occurred in a defined business area or department.

• *Senior Management Approval*

Proposed NASD Rule 3510(d) requires that ''[m]embers must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review.'' One commenter requested clarification of whether the member of senior management would actually be required to conduct the review or whether he or she must only ensure that the review was completed.[17] The NASD believes that it is the responsibility of the designated member of senior management to ensure an adequate, (at least) annual, firm-level review of the member's business continuity plan. This would not require the member of senior management to personally conduct all aspects of the review; however, he or she would be required to review the final plan, including any proposed changes to the existing plan, and have a reasonable basis on which to believe that any persons delegated to conduct the more detailed parts of the review had the appropriate levels of knowledge in their assigned areas.

• *Business Constituent, Bank, and Counter-Party Impact*

The proposal would require a member's business continuity plan to address ''business constituent, bank, and counter-party impact.'' In addressing this category, the NASD stated that firms should have procedures that assess the impact that a significant business disruption has on business constituents (businesses with which a member firm has an ongoing commercial relationship in support of the member's operating activities), banks (lenders), and counter-parties (such as other broker-dealers or institutional customers). In addition, the NASD stated that members should provide for alternative actions or arrangements with respect to their contractual relationships with business constituents, banks, and counter-parties upon the occurrence of a material business disruption to either party.

The commenters expressed concern over this provision. Commenters contended that the requirement to provide for alternative actions or arrangements would place an undue burden on members, might upset existing contracts, and presupposes that all such actions or arrangement are sufficiently critical to require consideration of alternatives.[18] Another commenter suggested that the term ''business constituent'' should be limited to customer relationships.[19]

The NASD disagrees with the commenters that the provision is unduly burdensome or that it might upset existing contracts. The provision would require only that a firm consider and include in its plan alternative steps that the firm would take in the event that a member's critical business constituents, bank, or counter-parties were inaccessible. The rule would not mandate that a member enter into supplemental contracts or conditional agreements. For example, if a member were to determine that a telecommunications company is a critical business constituent, the member would then be required to create procedures or actions to follow in the event that this business constituent was unavailable. Alternatively, the member could enter into a supplemental agreement with another telecommunications service to provide back-up services. The rule permits each member to adopt an approach in dealing with its business constituents, banks, and counter-parties that is best suited to the member's particular operations, structure, business, and location. It would require a member only to assess the effect of a significant business disruption on its business constituents, banks, and counter-parties and decide appropriate actions if faced with any such situation.

The NASD, however, recognizes that certain business constituent, banking, and counter-party relationships might not be critical to a firm's business or operations. The NASD, therefore, is amending the category of ''business constituent, bank, and counter-party impact'' in proposed NASD Rule 3510(c)(6) to read, ''[c]ritical business constituents, banks, and counter-parties.'' Members would be responsible for identifying those relationships that they deem critical for purposes of complying with the rule; the NASD, however, would consider, based on its experience in working with the rule following its adoption, whether to enumerate specific relationships that it views as critical to all members.

• *Disclosure Provision*

Following discussions with Commission staff and NYSE staff, the NASD also is amending the proposed rule text to require each member to disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. Furthermore, such disclosure would be required, at a minimum, to be made in writing to customers at account opening, posted on the member's Internet Web site (if the member maintains a Web site), and mailed to customers upon request. The NASD believes that this requirement would enable investors to make an educated decision about whether to place their funds and securities at the specific member based on the firm's business continuity planning and also would deter members from creating plans that do not adequately address contingency planning. The NASD, however, notes that members would not be required to disclose their actual plans; rather, each member would be required only to create a summary of how its plan addresses the possibility of significant business disruptions and disclose the member's general planned responses to significant business disruptions. Members would not need to disclose such factors as: the specific location of any back-up facilities; any proprietary information contained in the plan; or the parties with whom the member has back-up arrangements. Members, however, would need to disclose the existence of back-up facilities and arrangements.

• *Technical Amendment*

Two commenters questioned a technical amendment made by the NASD to the proposed rule text. Originally, proposed NASD Rule 3510(a) would have required that a member have a plan identifying procedures ''to be followed in the event of an emergency or significant business disruption.'' In Amendment No. 3, the NASD changed ''to be followed in the event of an emergency or significant business disruption'' to ''relating to an emergency or significant business disruption.'' The commenters believed that this new language is less clear than the language originally proposed.[20] This technical amendment, however, intends only to reflect that a plan might include more than a list of procedures to be followed by the member in the event of a significant business disruption. For example, a plan may reference an existing arrangement with another entity that permits the entity to perform services for the member in the event of a future business disruption. While this arrangement is not necessarily a procedure to be followed by the member in the event of a significant business disruption, it does reflect the member's

[17] *See* Edward Jones Letter.

[18] *See* SIA/BMA Letter; A.G. Edwards Letter.

[19] *See* Edward Jones Letter.

[20] *See* A.G. Edwards Letter; SIA/BMA Letter.

procedures relating to a business disruption and should be included in the member's business continuity plan.

Proposed NASD Rule 3520

• *Emergency Contact Information*

Proposed NASD Rule 3520 would require members to provide the NASD with emergency contact information and to update any information upon the occurrence of a material change. The proposed rule would require members, among other things, to designate two emergency contact persons that the NASD could contact in the event of a significant business disruption. Each emergency contact person would have to be a registered principal and a member of senior management.

One commenter asserted that the proposed rule should not require emergency contact persons to be members of senior management and registered principals. The commenter characterized this requirement as invasive and believed that the NASD should allow others to serve as emergency contact persons.[21] The NASD disagrees with this assessment. The NASD proposed this requirement to address situations in which the NASD wishes to contact a member in the event of a significant business disruption and believes that the emergency contact persons must be registered principals and members of senior management. Under such critical circumstances, the NASD wants to ensure that it will be able to contact persons in senior management directly regarding the condition and operations of the firm. Moreover, the NASD believes that it is essential that the emergency contact persons be members of senior management with the authority, experience, and knowledge to make potentially critical and time-sensitive decisions regarding the firm.[22]

• *Review and Update of Emergency Contact Information*

The NASD also is amending its proposed rule to include a requirement that each member review and update, if necessary, its emergency contact information on a quarterly basis. Proposed NASD Rule 3520(b), as amended by Amendment No. 1, would require members to promptly update their emergency contact information in the event of any material change. Because of the essential nature of this information, the NASD believes that members also should review and update this information on a quarterly basis to ensure its accuracy. Consistent with the quarterly FOCUS reporting schedule, members must review or update, if necessary, its emergency contact information within 17 business days after the end of each calendar quarter. Under this provision, the member's Executive Representative must perform the review and update. Finally, members must have adequate controls and procedures to ensure that only the Executive Representative may perform the review and update of the member's emergency contact information.

• *Effective Date of Rules*

One commenter requested that, upon Commission approval of the proposed rule change, the NASD announce in the **Federal Register** an effective date for the rule of 360 days after notice of Commission approval.[23] In Amendment No. 5, the NASD proposes to establish separate effective dates for introducing firms and clearing firms (including self-clearing firms) to create or modify their business continuity plans, as required by proposed NASD Rule 3510. The NASD believes that this is necessary because many introducing firms may need access to information regarding the business continuity planning of their clearing firms. To ensure that introducing firms would have sufficient time to create or modify sections of their plans that might be affected by the plans of their clearing firms, the NASD is extending by 30 days the proposed effective date for introducing firms to comply with proposed NASD Rule 3510.

In addition, to further consistency with the business continuity plan rule proposed by the NYSE, the NASD is proposing in Amendment No. 5 to calculate the effective dates of both proposed NASD Rules 3510 and 3520 from the date of publication of the Commission approval order. Accordingly, clearing firms would have to establish business continuity plans, as required by proposed NASD Rule 3510, within 120 days of the publication of the Commission order announcing the approval of the NASD's rule filing; introducing firms would be required to establish business continuity plans, as required by proposed NASD Rule 3510, within 150 days of the publication of the Commission order announcing the approval of the NASD's rule filing. All members (both introducing and clearing firms) would be required to designate emergency contact persons and provide the NASD with their contact information, as required by proposed NASD Rule 3520, within 60 days of publication of the Commission's approval order.

2. Statutory Basis

The NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,[24] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, as amended, which would help to ensure that members are prepared for significant business disruptions, is consistent with those purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were received in response to Notice to Members 02–23 (April 2002) and the Original Notice. The NASD received 32 comment letters following publication of the Notice to Members. The NASD received three comment letters in response to the Original Notice.[25] The NASD addressed these comments in Amendment Nos. 1, 2, and 3, which were published for comment in the **Federal Register** on March 10, 2003.[26] The NASD incorporates the interpretations in the Original Notice and Amendment Nos. 1, 2, and 3 to the extent that they are consistent with the interpretations contained in this release. In response to the **Federal Register** notice of March 10, 2003, the Commission received three comment letters.[27] The NASD's response to these comment letters is contained in section II(A)(1) above.

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

[21] *See* A.G. Edwards Letter.

[22] The NASD notes that the requirement that a contact person be a member of senior management and a registered principal is consistent with other NASD rules, including designation of a member's Executive Representative.

[23] *See* SIA/BMA Letter.

[24] 15 U.S.C. 78o–3(b)(6).

[25] *See supra* note 11.

[26] *See supra* note 7.

[27] *See supra* note 13.

longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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 No. SR–NASD–2002–108 and should be submitted by October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24323 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48502; File No. SR–NYSE–2002–35]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

September 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 September 15, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exhange Commission (''Commission'') Amendment No. 4 [3] to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE submitted the original proposed rule change to the Commission on August 16, 2002, and it was published in the **Federal Register** on September 9, 2002.[4] The NYSE subsequently submitted amendments to the proposed rule change on January 13, 2003; [5] March 7, 2003; [6] and March 27, 2003.[7] Amendment No. 3 incorporated and replaced Amendments Nos. 1 and 2 in their entirety. The Commission published Amendment No. 3 for comment in the **Federal Register** on April 3, 2003.[8] In response to comments received, the NYSE is proposing this Amendment No. 4. 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 is filing with the Commission amendments to proposed new NYSE Rule 446 (''Business Continuity and Contingency Plans''). The proposed rule would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans relating to an emergency or significant business disruption.

Below is the text of the proposed rule change, as amended. The base text is that provided in Amendment No. 3. Language added by Amendment No. 4 is in *italics;* language deleted by Amendment No. 4 is in brackets.

* * * * *

Business Continuity and Contingency Plans

New Rule 446

(a) Members and member organizations must develop and maintain a written business continuity and contingency plan establishing procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable members and member organizations [to continue their businesses in the event of a future significant business disruption] *to meet their existing obligations to customers. In addition, such procedures must address their existing relationships with other broker-dealers, and counter-parties.* Members and member organizations must make such plan available to the Exchange upon request.

(b) Members and member organizations must conduct, at a minimum, a yearly review of their business continuity and contingency plan to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.

(c) The elements that comprise a business continuity and contingency plan shall be tailored to the size and needs of a member or member organization [so as to enable the member or member organization to continue its business in the event of a future significant business disruption]. Each plan, however, must, at a minimum, address, if applicable:

(1) Books and records back-up and recovery (hard copy and electronic);

(2) identification of all mission critical systems and back-up for such systems;

(3) financial and operational risk assessments;

(4) alternate communications between customers and the firm;

(5) alternate communications between the firm and its employees;

(6) alternate physical location of employees;

(7) *critical* business constituent, bank and counter-party impact;

(8) regulatory reporting; [and]

(9) communications with regulators; *and*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division of Market Regulation (''Division''), Commission, dated September 11, 2003 (''Amendment No. 4'').

[4] Securities Exchange Act Release No. 46443 (August 30, 2002), 67 FR 57264 (''Original Notice'').

[5] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Division, Commission, dated January 10, 2003 (''Amendment No. 1'').

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division, Commission, dated March 6, 2003 (''Amendment No. 2'').

[7] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division, Commission, dated March 26, 2003 (''Amendment No. 3'').

[8] Securities Exchange Act Release No. 47584 (March 27, 2003), 68 FR 16334.

(10) how the member or member organization will assure customers prompt access to their funds and securities in the event the member or member organization determines it is unable to continue its business.

To the extent that any of the above items is not applicable, the member's or member organization's business continuity and contingency plan must specify the item(s) and state the rationale for not including each such item(s) in its plan. If a member or member organization relies on another entity for any of the above-listed categories or any mission critical system, the member's or member organization's business continuity and contingency plan must address this relationship.

(d) *Each member or member organization must disclose to its customers how its business continuity and contingency plan addresses the possibility of a future significant business disruption and how the member or member organization plans to respond to events of varying scope. At a minimum, such disclosure must be made in writing to customers at account opening, posted on the Internet website of the member or member organization (if applicable) and mailed to customers upon request.*

(e)[(d)] The term ''mission critical system,'' for purposes of this Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(f)[(e)] The term ''financial and operational risk assessments,'' for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

(*g*)[(f)] Members and member organizations must designate a senior officer, as defined in Rule 351(e), to approve the Plan, who shall also be responsible for the required annual review, as well as an Emergency Contact Person(s). Such individuals must be identified to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number). Prompt notification must be given to the Exchange of any change in such designations.

* * * * *

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 NYSE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend SR–NYSE–2002–35, a proposed new rule that would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans (''BCPs''), which establish procedures relating to an emergency or significant business disruption. As discussed in more detail below, the proposed amendments to the filing are the result of written comments received to the filing and conversations with Commission staff.

A similar proposal has been submitted by the National Association of Securities Dealers (''NASD'').[9]

Background

• August 2002 Filing

On August 16, 2002, the Exchange filed with the Commission proposed new NYSE Rule 446 that would require members and member organizations to establish and maintain business continuity and contingency plans.[10] The Original Notice was published for comment in the **Federal Register** on September 9, 2002.[11]

• Amendment Nos. 1 and 2

The Commission received three comment letters in response to the original proposals of the NYSE and the NASD relating to business continuity planning.[12] The Exchange filed Amendment Nos. 1 and 2 that responded to these comments.

• Amendment No. 3

Upon consideration of subsequent comments received from the staff of the Commission concerning proposed NYSE Rule 446, the Exchange filed Amendment No. 3 on March 27, 2003, to, among other things, clarify the intent of the proposal. Amendment No. 3 incorporated and replaced Amendment Nos. 1 and 2 in their entirety and was published in the **Federal Register** on April 3, 2003.[13] The Commission received one comment letter in response to the NYSE's Amendment No. 3,[14] and three comment letters in response to the comparable amendment filed by NASD.[15]

• Business Constituent, Bank and Counter-party Impact

Proposed NYSE Rule 446(c)(7) would require that a member's or member organization's BCP address ''business constituent, bank and counter-party impact.'' A commenter asked for clarification of this category.[16] Under this proposed category, members and member organizations would be required to establish procedures that assess the impact that a significant business disruption would have on business constituents (businesses with which a member or member organization has an on-going commercial relationship pertaining to the support of the member's or member organization's operating activities), banks (lenders), and counter-parties (such as other broker-dealers or institutional customers). In addition, members and member organizations

[9] *See* Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (notice of original NASD proposal relating to business continuity planning); Securities Exchange Act Release No. 47441 (March 4, 2003), 68 FR 11432 (March 10, 2003) (notice of Amendment Nos. 1, 2, and 3 to NASD proposal).

[10] On August 7, 2002, the NASD filed a similar proposal. *See* Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (SR–NASD–2002–108).

[11] *See supra* note 4.

[12] One commenter submitted a single letter that addressed both proposals. *See* letter from Melvyn Musson, Edward D. Jones & Co. (''Edward Jones''), to Jonathan G. Katz, Commission, dated September 30, 2002. A second commenter submitted two letters that addressed each proposal separately. *See* letters from Jerry W. Klawitter, Securities Industry Association and Bond Market Association, to Margaret H. McFarland, Deputy Secretary, Commission, dated September 30, 2002 (''SIA/BMA Letter 1''). A third commenter submitted a letter that addressed only the NASD proposal. *See* letter from Frances M. Stadler, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated September 30, 2002.

[13] *See supra* note 8.

[14] *See* letter from Securities Industry Association and the Bond Market Association to Jonathan G. Katz, Secretary, Commission, dated April 24, 2003 (''SIA/BMA Letter 2'').

[15] *See* letter from Securities Industry Association and the Bond Market Association to Jonathan G. Katz, Secretary, Commission, dated March 31, 2003; letter from Thomas K. Heard, A.G. Edwards & Sons, Inc. to Jonathan G. Katz, Secretary, Commission, dated March 31, 2003 (''A.G. Edwards Letter''); letter from Melvyn Musson, Edward Jones, to Jonathan G. Katz, Secretary, Commission, dated March 28, 2003.

[16] *See* SIA/BMA Letter 1.

would be required to provide for alternative actions or arrangements with respect to their contractual relationships with business constituents, banks, and counter-parties upon the occurrence of a material business disruption to either party. The Exchange's Information Memo announcing adoption of the rule would provide the guidance described above with regard to clarification of this requirement.

As discussed in more detail below, the proposed amendments to this provision of the rule received additional comments upon its publication in the **Federal Register**. The Exchange is responding to those comments in this Amendment No. 4.

• BCPs Should be Reasonably Designed to Enable a Firm to Continue its Business

As originally proposed, a literal reading of proposed NYSE Rule 446, could have suggested that the rule would require members and member organizations to create, maintain, and periodically review a BCP that would have to be effective in enabling them to continue their business in the event of a future significant business disruption.

While the Exchange did not intend to propose a rule which limits the scope of its members' and member organizations' responsibilities in establishing such plans, the rule text did not make clear the NYSE's intention when it first proposed the Rule ''that members and member organizations should be obligated to develop a business continuity and contingency plan that is reasonably designed, in light of particular characteristics of the firm, to allow the firm to recover as early as practicable in the event of a future significant business interruption.

Amendment No. 3, as proposed, made clear that the rule would require the creation of not only a written business continuity and contingency plan, but also a reasonably effective plan, to enable a firm to recover as early as practicable in the event of a future significant business interruption.

Amendment No. 4

• Business Constituent, Bank, and Counter-party Impact

As noted above, the Exchange had received comments upon the publication of the changes proposed in Amendment No. 3. A commenter suggested that the requirement to provide for alternative actions or arrangements places an undue burden on members and member organizations, might upset existing contracts, and presupposes that all such actions or arrangements are sufficiently critical to require consideration of alternatives. The commenter suggested that the Exchange ''remove the sentence suggesting a requirement to provide for alternatives so as not to confuse the goal of making assessments with the goal of planning alternatives.''[17]

The Exchange disagrees with the commenter that the provision is unduly burdensome or that it might upset existing contracts. The provision would require only that a member or member organization consider and include in its BCP alternative steps that the firm would take in the event that a member's or member organization's critical business constituents, bank, or counter-parties were inaccessible. The rule would not mandate that a member or member organization enter into supplemental contracts or conditional agreements. For example, if a member or member organization were to determine that a telecommunications company was a critical business constituent, the member or member organization would then be required to identify procedures or actions that could be followed in the event that this business constituent was unavailable. Alternatively, the member or member organization could enter into a supplemental agreement with another telecommunications service to provide back-up services. The rule would permit each member or member organization to adopt an approach in dealing with its business constituents, banks, and counter-parties that is best suited to the member's or member organization's particular operations, structure, business, and location. It would require a member or member organization only to assess the effect of a significant business disruption on its business constituents, banks, and counter-parties and determine appropriate actions if faced with any such situation.

The Exchange, however, recognizes that certain business constituent, banking, and counter-party relationships might not be critical to a firm's business or operations. Therefore, in response to comments, the Exchange is amending the category of ''business constituent, bank, and counter-party impact'' in proposed NYSE Rule 446(c)(7) to read, ''[c]ritical business constituents, banks, and counter-parties.'' Members and member organizations would be responsible for identifying those relationships that they deem critical for purposes of complying with the rule. The Exchange will consider, based on its experience in working with the rule following its adoption, whether to enumerate specific relationships that it views as critical to all members and member organizations.

• BCPs Should be Reasonably Designed to Enable a Firm to Continue its Business

The commenters expressed concern that the language added by Amendment No. 3 to proposed NYSE Rule 446(a) would create a new obligation on a member or member organization to continue its business after a significant business disruption.[18] This is not the intention of the proposal. The proposal would not deprive a member or member organization of its autonomy to choose to cease its operations at any time, provided it did so in a manner consistent with applicable laws and Commission and Exchange rules. Nevertheless, to clarify that the rule would not create a new obligation for members and member organizations to continue their businesses, the Exchange is amending the proposed rule.

Specifically, the proposed rule text stating that ''[s]uch procedures must be reasonably designed to enable the member or member organization to continue its business in the event of future significant business disruptions'' is being amended to read, ''[s]uch procedures must be reasonably designed to enable the member or member organization to meet its existing obligations to customers. In addition, such procedures must address its existing relationships with other broker-dealers and counter-parties.'' The general principle that firms are not required to remain in business is further recognized in a related amendment that the Exchange is now proposing to make with respect to the categories that a member's or member organization's plan must, at a minimum, address. In particular, following discussions with Commission staff and NASD staff, the Exchange is amending proposed NYSE Rule 446(c) to require a plan to address how a member or member organization would assure customers' prompt access to their funds and securities in the event that the member determines it is unable to continue its business. This new category is intended to address how customers holding funds or securities at the member or member organization would be able to access their funds and/or securities if a member or member organization were unable to continue its business following a significant business disruption.

Commenters also questioned an amendment made by the Exchange to the proposed rule text. As originally proposed, Rule 446(a) would have required that a member or member organization have a plan identifying procedures ''to be followed in the event

[17] *See* SIA/BMA Letter 2.

[18] *See* SIA/BMA Letter 2.

of an emergency or significant business disruption.'' In Amendment No. 3, the Exchange changed ''to be followed in the event of an emergency or significant business disruption'' to ''relating to an emergency or significant business disruption.'' The commenters believed that this new language was less clear than the language originally proposed.[19] This amendment, however, intends only to reflect that a BCP might include information other than a list of procedures to be followed by the member or member organization in the event of a significant business disruption. For example, a BCP might reference an existing arrangement with another entity that permits the entity to perform services for the member or member organization in the event of a future business disruption. While this arrangement is not necessarily a procedure to be followed by the member or member organization in the event of a significant business disruption, it does reflect the member's or member organization's plan relating to a business disruption and should be included in the member's or member organization's BCP.

• Disclosure Provision

Following discussions with Commission staff and NASD staff, the Exchange is amending the proposed rule text to require each member or member organization to disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member or member organization plans to respond to events of varying scope. Furthermore, such disclosure must, at a minimum, be made in writing to customers at account opening, posted on the member's or member organization's Internet website (if the member or member organization maintains a website), and mailed to customers upon request.[20]

The Exchange believes that this requirement would allow investors to evaluate a member's or member organization's BCP when determining whether to place their funds and securities at the specific entity. This requirement also would deter members or member organizations from creating plans that do not adequately address contingency planning. The Exchange, however, notes that members and member organizations would not be required to disclose their entire plans; rather, each member or member organization would be required to create a summary of how its plan addresses the possibility of significant business disruptions and disclose the member's or member organization's general planned responses to significant business disruptions. Members and member organizations would not need to disclose such factors as: the specific location of any back-up facilities; any proprietary information contained in plan; and the parties with whom the member has back-up arrangements. Members and member organizations, however, would need to disclose the existence of back-up facilities and arrangements.

• Implementation Schedule

A commenter requested that the proposal indicate the time required for implementation and suggested that this time be 360 days from publication of the final Rule in the **Federal Register**.[21] The NYSE believes that the rule should take effect 120 days after approval by the Commission.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.[22] Under that section, the rules of the Exchange must be designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange received written comments in response to the Original Notice that it responded to Amendment No. 3.[23] The Exchange received comments in response to the publication of Amendment No. 3 that it has responded to above.[24]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–0609. 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 filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-NYSE–2002–35 and should be submitted by October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24381 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

[19] *See* SIA/BMA Letter 2; *see also* A.G. Edwards Letter.

[20] *See* proposed NYSE Rule 446(d).

[21] *See* SIA/BMA Letter 2.

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* note 12.

[24] *See supra* note 14–15.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48498; File No. SR–NQLX–2003–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NQLX LLC To Remove Requirement That Members Record the Clearing Account Indicator on Order Tickets

September 17, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on August 28, 2003, NQLX LLC (''NQLX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NQLX also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under section 5c(c) of the Commodity Exchange Act (''CEA'') [3] on August 27, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX is proposing changes to NQLX Rule 408 because it has determined that NQLX Rule 408(c)(6)'s requirement that its Members record on order tickets the alpha-code for the relevant ''Clearing Account Indicator'' [4] is redundant and unnecessary so long as at the time of order entry its Members submit the appropriate Clearing Account Indicator to NQLX's automated trading system along with other required order information. The text of the proposed rule change follows; additions are italicized; deletions are [bracketed].

* * * * *

Rule 408 Submitting Orders

(a)–(b) No Change
(c)(1)–(5) No Change
[(6) Clearing Account Indicator,]
([7]*6*) Exchange Contract,
([8]*7*) delivery or expiration month,
([9]*8*) quantity,
([10]*9*) buy or sell,
([11]*10*) price or price limit or range,
([12]*11*) put or call and exercise price (if applicable),
([13]*12*) open or close position indicator (if applicable),
([14]*13*) Order instructions from Rule 410 (if applicable),
([15]*14*) Strategy type indicator (if applicable), and
([16]*15*) code indicator for a Cross Transaction, Block Trade, or Exchange for Physical Trade (if applicable).

(d) A Member or Person Associated with a Member must ensure that the information from items (4) through (1[6]*5*) *in Rule 408(c) as well as the appropriate Clearing Account Indicator* [is] *are* [also] submitted to the ATS for all Orders *at the time of Order entry.*

(e) If at the time of Order entry the Member or Person Associated with the Member fails to provide the appropriate Clearing Account Indicator as required by Rule[s] 408[(c)(6) and](d), then the Member or Person Associated with the Member must timely provide the appropriate Clearing Account Indicator for the trade through the Trade Registration System.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NQLX proposes revising specified provisions of NQLX Rule 408 to remove the unnecessary redundancy of requiring its Members to record exchange-designated Clearing Account Indicators on order tickets as well as submitting those same Clearing Account Indicators at the time of order entry to NQLX's automated trading system. NQLX requires Clearing Account Indicators from its Members to facilitate providing its clearing house, The Options Clearing Corporation, with information regarding the appropriate clearing account type (*i.e.*, market maker, firm/proprietary, or customer) for all orders at the time of order entry. Therefore, so long as NQLX Members submit the appropriate Clearing Account Indicator for orders submitted to NQLX's automated trading system at the time of order entry, the purpose of this rule provision is met. As such, NQLX Rule 408(c)(6)'s current requirement that Members also record Clearing Account Indicators on order tickets is redundant and burdensome because it requires each preparer of an order ticket submitted to NQLX to know NQLX's exchange-designated Clearing Account Indicators, but serves no additional regulatory purpose.

No other substantive changes are proposed to NQLX Rule 408 and Members are still required to record customer account numbers or identifiers and customer type indicators along with other required information on each order ticket. Therefore, with the adoption of these proposed changes, NQLX believes that it will continue to maintain audit trails necessary and appropriate to surveil trading in security futures products in its market and to coordinate the surveillance with other markets as required.

NQLX believes that the proposed rule change is consistent with the requirements, where applicable, under section 6(h)(3)(J) of the Act [5] and the criteria, where applicable, under section 2(a)(1)(D)(i)(IX) of the CEA,[6] as modified by joint orders of the Commission and the CFTC.

2. Statutory Basis

NQLX files this proposed rule change pursuant to section 19(b)(7) of the Act.[7] NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,[8] including the requirement that NQLX have audit trails necessary and appropriate to facilitate coordinated surveillance to detect, among other things, manipulation.[9] NQLX further believes that its proposed rule change complies with the requirements under section 6(h)(3) of the Act [10] and the criteria under section 2(a)(1)(D)(i) of the CEA,[11] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of section 6 of the Act,[12] in general, and

[1] 15 U.S.C. 78s(b)(7).
[2] 17 CFR 240.19b–7.
[3] 7 U.S.C. 7a–2(c).
[4] NQLX Rule 101(a)(15) defines ''Clearing Account Indicator'' as ''the type of account designated by the Clearing Organization.'' In this context, the type of account means the clearing account type at The Options Clearing Corporation (*i.e.*, market maker, firm/proprietary, or customer).
[5] 15 U.S.C. 78f(h)(3)(J).
[6] 7 U.S.C. 2(a)(1)(D)(i)(IX).
[7] 15 U.S.C. 78s(b)(7).
[8] Pub. L. 106–554, 114 Stat. 2763 (2000).
[9] *See* section 6(h)(3)(J) of the Act, 15 U.S.C. 78f(h)(3)(J).
[10] 15 U.S.C. 78f(h)(3).
[11] 7 U.S.C. 2(a)(1)(D)(i).
[12] 15 U.S.C. 78f.

section 6(b)(5) of the Act,[13] in particular, in that they will prevent fraudulent and manipulative acts and practices, will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[14] the proposed rule change became effective on August 27, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule 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 these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NQLX–2003–07 and should be submitted by October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24379 Filed 9–25–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(7)(B).

[15] 15 U.S.C. 78s(b)(1).

[16] 17 CFR 200.30–3(a)(75).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: *OMB,* Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

SSA, Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Petition to Obtain Approval Of A Fee For Representing A Claimant Before The Social Security Administration—20 CFR Subpart R, 404.1720, 404.1725, Subpart F, 410.686b, Subpart O, 416.1520 and 416.1525—0960–0040.* A representative of a claimant for Social Security benefits must file either a fee petition or a fee agreement with SSA in order to charge a fee for representing a claimant in proceedings before SSA. The representative uses Form SSA–1560 to petition SSA for authorization to charge and collect a fee. A claimant may also use the form to agree or disagree with the requested fee amount or other information the representative provides on the form. SSA uses the information to determine a reasonable fee that a representative may charge and collect for his or her services. The respondents are claimants, their attorneys, and other persons representing them.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 34,624.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 17,312 hours.

2. *Child Relationship Statement—0960–0116.* SSA uses the information collected on Form SSA–2519 to help determine the entitlement of children to Social Security benefits under section 216(h)(3) of the Social Security Act (Deemed Child Provision). The respondents are persons providing information about the relationship between the worker and his/her alleged biological child, in connection with the child's application for benefits.

Type of Request: Extension of an OMB-approved collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

3. *Request for Replacement Social Security Benefits Statement—20 CFR 401.45—0960–0583.* The information requested by the Social Security Administration (SSA) via the Internet

will be used to verify, identify, and to provide replacement copies of Form SSA–1099/SSA–1042, which are needed to prepare Federal tax returns. This Internet option to request a replacement SSA–1099/SSA–1042 will eliminate the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a replacement SSA–1099/1042 via the Internet.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 583 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the addresses listed above.

1. *Statement of Self-Employment Income—20 CFR Subpart B, 404.101, Subpart K, 404.1096—0960–0046.* The information collected on Form SSA–766 is used to determine if the individual will have at least the minimum amount of self-employment income needed for one or more quarters of coverage in the current year. Additional quarters of coverage may be credited on the basis of the information obtained, and benefits payments may be expedited where there are sufficient quarters of coverage to give the individual insured status. The respondents are self-employed persons applying for Social Security benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 417 hours.

2. *Application FforFor Special Age 72-or-Over Monthly Payments—20 CFR, Subpart D, 404.380–384—0960–0096.* Form SSA–19–F6 is needed to determine if an individual is entitled to Special Age 72 payments. Eligibility requirements will be evaluated based on the data collected in this form. The respondents are individuals who attained age 72 before 1972.

Type of Request: Extension of an OMB-approved collection.

Number of Respondents: 10.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 3 hours.

3. *Subpart T-State Supplementation Provisions—2020 CFR 416.2095–2099—0960–0240.* Section 1618 of the Social Security Act contains pass-along provisions of the Social Security Amendments. These provisions require States that supplement the Federal SSI benefits to pass along Federal cost-of-living increases to the individuals who are eligible for State Supplementary benefit payments. If the State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. Regulations at 20 CFR 416.2099 require the States to report mandatory minimum and optional supplementary payment data to SSA. The information is used to determine compliance with the law and regulations. The respondents are States that supplement Federal SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 26.

Frequency of Response: 15 states report quarterly, 11 states report annually.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 71 hours.

4. *You Can Make Your Payment by Credit Card—0960–0462.* SSA will use the information on Forms SSA–4588 and SSA–4589 to update the individual's Social Security record to reflect that a payment has been made on their overpayment and to effectuate payment through the appropriate credit card company. The respondents are Title II (Old-Age, Survivors, and Disability Insurance) and Title XVI (Supplemental Security Income) debtors; and citizens requesting material through SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of respondents: 19,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,583 hours.

5. *State Vocational Rehabilitation Agency Claim (SSA–199–U2) and Subpart V—Payments for Vocational Rehabilitation Services—20 CFR Sections 404.2104, 404.2108, 404.2113, 404.2117, 404.2121, 416.2204, 416.2208, 416.2213, 416.2217–0960–0310.* The information collected on Form SSA–199–U2 and through these current rules is used by SSA to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether those claims for services should be paid. The respondents are the 80–100 State vocational rehabilitation agencies and alternate participants who offer vocational and employment services for SSA beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

CFR sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.2108 & 416.2208 SSA–199	90	[2]145	23	5,003
404.2117 & 416.2217	80	1	160	80
404.2121 & 416.2221	[1]90	1	100	833

[1]500 total responses for all participants.
[2]On Average.

Total Burden Hours For this Request: 5,916 hours

6. *Childhood Disability Evaluation Form—20 CFR 416.924—0960–0568.* SSA and State Disability Determination Services use the information collected on the Form SSA–538 to record medical and functional findings regarding the severity of impairments of the children who claim Supplemental Security Income benefits based on disability. The form is used for initial determinations of eligibility, in appeals and in initial continuing disability reviews.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 312,500 hours.

Dated: September 23, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–24307 Filed 9–25–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Program: Cooperative Agreements for Homeless Outreach Projects and Evaluation (HOPE); Program Announcement No. SSA–OPDR–03–02

AGENCY: Social Security Administration.

ACTION: Announcement of the availability of cooperative agreement funds for fiscal year 2003 and request for applications.

SUMMARY: The Social Security Administration requests applications for cooperative agreement funding to support projects that provide targeted outreach, supportive services, and benefit application assistance to individuals who are chronically homeless.

DATES: The closing date for receipt of cooperative agreement applications under this announcement is November 25, 2003. Section VI of this announcement contains instructions for submitting applications under this announcement.

Prospective applicants are also asked to submit, preferably by October 16, 2003, a fax, post card, letter, or e-mail of intent that includes (1) the program announcement number (SSA–OPDR–03–02) and title (Homeless Outreach Projects and Evaluation); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person.

The notice of intent should be (1) e-mailed to *Homeless.Outreach@ssa.gov,* using ''HOPE—Notice of Intent'' in the subject line; (2) faxed to (410) 597–0825, to the attention of the HOPE Project Team; or (3) mailed to Social Security Administration, Office of Program Development and Research, Office of Program Development, 128 Altmeyer Building; 6401 Security Boulevard, Baltimore, Maryland, 21235–6401, Attention: HOPE Project Team.

The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice is to allow SSA staff to estimate the number of technical reviewers needed and to avoid potential conflicts of interest in the review.

ADDRESSES: All applications for funding under this announcement should be submitted via the new process that the Federal government has established for electronic submission of applications for grant and cooperative agreement funding.

FOR FURTHER INFORMATION CONTACT: Send questions about this announcement to the following Internet address: *Homeless.Outreach@ssa.gov.* When sending a question, use the program announcement number (SSA–OPDR–03–02) and the date of this announcement, September 26, 2003. Questions and answers will be posted to the ''Outreach Initiatives'' link on the Social Security Service to the Homeless Web site at: *http://www.socialsecurity.gov/homelessness.* The identity of questioners will not be revealed when questions and answers are posted on this Web site. All applicants are encouraged to review the Web site while developing their applications.

Although the Internet is the preferred method of communication, applicants who have questions about the program content of the application may also contact: Virginia McCaskey, Research Analyst, or Leola Brooks, Director, Office of Program Development. The phone number for Virginia McCaskey is (410) 965–3425, and the phone number for Leola Brooks is (410) 965–2219. Inquiries may also be faxed to (410) 597–0825, or mailed to: Social Security Administration, Office of Program Development and Research, Office of Program Development, 128 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, Attention: HOPE Project Team.

For general (non-programmatic) information—regarding submission of applications, contact: Phyllis Y. Smith, Grants Management Officer, Social Security Administration, Office of Acquisition and Grants, Grants Management Team, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207–5279, *phyllis.y.smith@ssa.gov,* phone (410) 965–9518.

Application Kit: Section VI of this announcement contains instructions for obtaining an application kit.

SUPPLEMENTARY INFORMATION: This overview of the HOPE projects is included to allow potential applicants to quickly learn the contents of this announcement, and to decide whether they are eligible to apply for the funding opportunity described. It follows the outline of the full text of the first three sections of the announcement.

Program Description: SSA is making cooperative agreement funding available to demonstrate methods to improve the quality of assistance that medical and social service providers give to homeless individuals who file claims for Social Security benefits. The projects are shaped by SSA knowledge about effective outreach practices, as well as evaluation data from previous outreach demonstration projects.

Awardees of cooperative agreement funding will be required to provide outreach, supportive services, and benefit application assistance to chronically homeless adults and/or children. The target population for these projects is homeless individuals who are members of under-served groups, which may include people with severe and persistent mental illness, HIV infection, limited English proficiency, multiple and co-occurring disorders, or cognitive impairments, as well as homeless veterans with disabilities.

Applicants may propose to establish presumptive disability screening procedures or pre-release procedures for institutionalized individuals with disabilities. Applicants may also propose to use project funding to improve their capacity to provide representative payment services to beneficiaries, strengthen their ability to assist disability claimants with filing electronic disability applications, or develop an employment intervention.

SSA will train staff of organizations that are awarded funding under this announcement. The focus of the training will be to improve participant knowledge about SSA's requirements for disability case processing. SSA will conduct an evaluation of projects, with a focus on the impact that training has on the quality of assistance provided to disability claimants by the grantee. SSA is particularly interested in achieving outcomes such as reduced processing time, and reduced denials for initial claims from individuals that would be eligible for benefits under SSA's rules.

Award Information: Congress appropriated $8 million in FY 2003, and directed SSA to use the appropriation to provide outreach to ''homeless and under-served'' populations. SSA intends to fund approximately 30 projects, with awards of up to $200,000 in the first year of project funding. Subject to the availability of additional appropriations, SSA plans to fund projects for four years, with requirements that awardees reduce their dependence on cooperative agreement funding in each year of the projects. Year 4 activities will consist only of follow-up data reporting. SSA has reserved a portion of the appropriation to evaluate the projects,

and to provide training and technical assistance to grantees.

These projects are authorized by section 1110 of the Social Security Act, and will be funded with cooperative agreements, which anticipate substantial involvement of the government in project design and operation.

Eligibility Information: Public and private organizations, including non-profit, profit-making, and faith-based organizations, may apply for cooperative agreement funding made available under this announcement. Applicants must have existing expertise and capacity to conduct outreach activities to locate and engage homeless individuals; be able to provide or arrange for health care services; and be able to provide culturally competent services to all members of the target population, without regard to race, sex, religion, or disability.

Cooperative agreement funds are not to be used to cover costs that are reimbursable under an existing public or private program. Awardees are required to contribute a non-Federal match of project costs of at least 5% of the total project cost. The non-Federal share may be cash or in-kind (property or services).

Table of Contents

Section I. Program Description and Background
A. Introduction
B. Data on Homelessness
C. Background
1. Program Information
2. SSA Collaboration with other Federal Agencies and the Interagency Council on Homelessness
3. SSA Outreach
D. Project Goals and Objectives
E. Project Features
1. Use of Cooperative Agreement Funds
2. Training and Technical Assistance
3. Conferences
4. Meetings
Section II. Award Information
A. Statutory Authority and Catalog of Federal Domestic Assistance Number
B. Type of Awards
C. Number, Size, and Duration of Projects
D. Awardee Share of the Project Costs
Section III. The Application Process
A. Eligible Applicants
B. Targeted Population
C. Costs
Section IV. Program Requirements
A. General Requirements
B. Evaluation
1. Enrollment Guidelines
C. Data Collection
1. Data Elements
2. Privacy
3. Training Data
D. Reporting
E. Monitoring
F. Technical Assistance
Section V. Application Review Process and Evaluation Criteria
A. Application Process
B. Application Requirements
C. Review and Evaluation
D. Application Approval
E. Evaluation Criteria
1. Capability
2. Project Design
3. Resources and Management
Section VI. Instructions for Obtaining and Submitting an Application
A. Availability of Forms
B. Checklist for a Complete Application
C. Guidelines for Application Submission

Section I. Program Description and Background

A. Introduction

The Social Security Administration (SSA) is making cooperative agreement funding available to support projects that provide outreach, supportive services, and application assistance for Supplemental Security Income (SSI) and all forms of Social Security benefits to individuals who are chronically homeless. The cooperative agreement projects are part of a broad Federal strategy to end chronic homelessness. The projects will be designed to identify and remove barriers to the benefit application process by outreach and assistance to homeless individuals, particularly those who are members of ''under-served'' populations. Homeless under-served individuals include, but are not limited to, those who have difficulty accessing services due to a disabling impairment, such as mental illness or other cognitive impairment; individuals with limited English proficiency; persons in jails and institutions, persons with multiple impairments and co-occurring disorders, and persons who have symptomatic HIV infections. Homeless under-served individuals may also include veterans and children with disabilities.

Definitions of homelessness vary. For the purposes of defining the target population to be served by grantees in this project, homeless individuals are adults or children who lack permanent housing. Individuals are considered homeless if they live on the street, or other location not meant for habitation, such as an abandoned building or car; in a supervised facility such as a shelter; transitional or emergency housing; ''doubled up'', *i.e.*, living with a series of relatives or friends; or in an institution or correctional facility with no permanent address.

Further, this set of cooperative agreements will focus on individuals who are considered ''chronically homeless,'' defined as ''an individual with a disability or multiple disabilities who has been homeless for at least one year or who has had multiple periods of homelessness in a multi-year period'' (Interagency Council on Homelessness, 2003).

As an Agency, SSA is uniquely positioned through its network of over 1300 field offices to provide assistance to homeless individuals. For homeless individuals, who are either age 65 or older, blind or disabled, SSA plays a critical role in helping provide monthly benefit payments. These benefits can help homeless individuals to obtain housing, and also provide critical linkage to medical coverage.

For the purposes of this announcement, the word ''claimant'' is used to describe an individual who has applied for Social Security Benefits. The word ''participant,'' may be used to describe an individual who is enrolled in the project to receive services from the grantee. The word ''applicant'' refers to organizations that apply for cooperative agreement funding under this announcement.

B. Data on Homelessness

National estimates on homelessness indicate there are anywhere from 500,000–700,000 homeless individuals on any given night. In the 2000 census, the U.S. Census Bureau (Census) did not attempt to accurately enumerate homeless individuals. The Census published a report on the ''Emergency and Transitional Shelter Population,'' but cautions users of the data that the methodology allows only for identification of people who were in ''non-conventional housing'' at the time of the census count.[1] The census data does not provide an estimate of the numbers of homeless persons who are disabled or elderly.

The 1996 National Survey of Homeless Assistance Providers and Clients (NSHAPC), conducted by the Interagency Council on Homelessness (ICH), was designed to provide information about the providers of homeless assistance and the characteristics of homeless persons who use services. Of approximately 4,000 homeless individuals surveyed, 11 percent received Supplemental Security Income (SSI) benefits (see description in Section I. C.1).

Unfortunately, the survey methodology does not allow us to draw firm conclusions about numbers of homeless individuals who might qualify

[1] Smith, Annetta C. and Denise I. Smith, U.S. Census Bureau, Census Special Reports, Series CENSR/01-*Emergency and Transitional Shelter Population:* 2000, U.S. Government Printing Office, Washington, DC 20401.

for retirement, survivors, or disability benefits or for SSI benefits; however, the survey does indicate that rates of chronic illness and serious physical and mental impairments are quite high among the homeless population. Forty-five percent of the homeless individuals surveyed reported having one or more chronic physical health conditions, while 39% report mental health problems.

An estimated 10 percent of the nation's homeless are considered ''chronically homeless,'' as defined in Section I.A.

C. Background

1. Program Information

SSA administers two programs that provide cash benefits: Retirement, Survivors, and Disability Insurance (RSDI) and Supplemental Security Income (SSI).

RSDI Benefits. RSDI benefits are based on worker contributions to the Social Security Trust fund. There are four general types of RSDI benefits: retirement, disability, family, and survivors benefits. Individuals may be eligible for benefits based on their own contributions to the Social Security Trust Fund, or based on contributions of a family member. The amount of the benefit is based on the amount of the insured worker's contributions. Disability benefits are often referred to as Social Security Disability Insurance, or SSDI, although this category of RSDI benefits also includes Disabled Widow(er)s Benefits and Childhood Disability Benefits. For that reason, this type of benefit will be referred to as ''Social Security disability benefits'' or ''disability insurance benefits'' in this announcement.

Individuals who are eligible for retirement benefits qualify for Medicare. So do individuals who receive disability insurance benefits, after a 24 month entitlement period. Coverage under Medicare Part A (hospital insurance) is automatic. Beneficiaries must pay a premium to be covered by Part B, which helps to pay for outpatient services, as well as certain medical supplies. Some beneficiaries may qualify for the State Medicaid program to pay their Medicare, Part B premium.

SSI. The SSI program is financed from general revenue funds of the U.S. Treasury and provides monthly benefit payments to aged, blind, and disabled people who have limited resources and income. The Federal government pays a Federal benefit rate (FBR). In 2003, the FBR for an individual is $552 per month and $829 per month for a couple. In addition, many States supplement the FBR; the supplementary benefit amounts and the categories of persons eligible for these benefits vary from State to State. In most states, SSI eligibility automatically results in eligibility for Medicaid; in a few states, individuals must file a separate application for Medicaid.

An individual or couple may have earned or unearned income and still may be eligible for the SSI program. Under numerous provisions, a certain amount of income is excluded in determining eligibility and computing the SSI benefit amount. People who live in a State that supplements the Federal payment may have higher amounts of income and still may qualify for some benefits.

To be eligible for SSI a person must reside in the U.S. or the Northern Mariana Islands and be a U.S. citizen or national of the United States, or an Alien if he or she meets the requirements of the laws for non-citizens that went into effect on August 22, 1996. In general, beginning August 22, 1996, most aliens must meet two requirements to be potentially eligible for SSI benefits:

- Be in a qualified alien category; and
- Meet a condition that allows qualified aliens to get SSI benefits.

Further information about SSI eligibility for non-citizens is available at *http://www.socialsecurity.gov/pubs/11051.html.*

Concurrent Eligibility. Some individuals may be eligible for benefits under both Social Security disability insurance and the SSI program (retirees and survivors may also receive some SSI supplement to their monthly benefit). Many individuals who receive Social Security disability benefits, who also have low incomes and limited assets, may qualify for Medicaid, or may qualify for their State Medicaid program to pay their Medicare premiums.

Disability Benefits. Approximately 2.5 million individuals applied for disability insurance and/or SSI disability benefits in SSA's fiscal year 2002. Social Security disability insurance and SSI disability payments are made to over nine million individuals with disabilities and their families.

The Social Security Act establishes a stringent standard for eligibility for benefits that applies to both SSI and disability insurance claimants. For individuals aged 18 or older, disability is defined as an inability to ''engage in substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' SGA refers to earnings from work. The amount of earnings that constitutes SGA is increased annually. In 2003, the SGA amount is $800 per month for non-blind persons. The SGA amount for statutorily blind individuals for 2003 is $1,330 per month.

Individuals under the age of 18 may qualify for an SSI benefit based on disability. In order to be considered disabled, a child must have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations. The impairment(s) must last or be expected to last twelve months or more, or to result in death. A child may not be considered disabled if he or she has earnings considered to be SGA.

SSA works cooperatively with the States, who are responsible for making disability and blindness determinations through their Disability Determination Services (DDS) offices. SSA takes a detailed medical history from the claimant during the initial interview and sends that information to the DDS. The DDS then secures medical records and, if needed, schedules an additional medical examination, called a ''consultative examination'' (CE). Based upon this evidence, and in combination with other evidence, such as vocational factors (age, education, and work history) a disability or blindness determination is made.

2. SSA Collaboration With Other Federal Agencies and the Interagency Council on Homelessness

With his fiscal year 2003 budget, President George W. Bush announced an initiative to end chronic homelessness in ten years. He reactivated the Interagency Council on Homelessness (ICH), which has developed a comprehensive plan to achieve the President's vision.[2] The Executive Director of the ICH, Philip Mangano, describes the effort, ''In collaboration, a number of Federal agencies are creating innovative initiatives that will bring change in the lives of those who are homeless and at risk of homelessness and change on the streets of our country.'' The outreach projects funded under this announcement are part of this comprehensive Federal strategy to end chronic homelessness.

SSA is an ICH member agency, and participates in collaborations with other

[2] The mission of the Interagency Council on Homelessness and links to member agencies are found on the ICH Web site at: *http://www.ich.gov/*.

Federal agencies to combat homelessness. SSA developed a plan to improve services to individuals experiencing homelessness, and has established a workgroup to oversee implementation of the plan, which includes a Web site with information about SSA programs, as well as links to other resources (*http://www.socialsecurity.gov/homelessness/*).

3. SSA Outreach

SSA conducts outreach and education to the general public and social service providers regarding available benefits. These services are primarily developed and provided by local field offices (FO). Current outreach activities include:

- Establishing ongoing relationships with organization, including shelters, churches, and county welfare departments to provide immediate assistance and improve access to Social Security's programs;
- Working with the Veteran's Administration to assist homeless veterans filing claims;
- Visiting homeless shelters, social service agencies, and hospitals to take claims;
- Distributing public information materials to agencies, and maintaining resource information about those agencies;
- Training community service providers;
- Establishing state-wide memorandums of understanding (MOU) for SSI pre-release applications from prisons; and
- Developing liaisons with new service providers.

SSA also provides information about Social Security and SSI benefits to national advocacy organizations for dissemination to affiliates, professionals and consumers. SSA prepares and releases a Monthly Information Package to all FOs that contains print media products for placement with local media, and a monthly newsletter, the Social Security Courier, which is sent to advocacy groups, nonprofit organizations, and intergovernmental entities. These products contain information on programs and issues relevant to homeless populations.

SSI Outreach Projects. In the 1990's, Congress provided funding for SSA to conduct the SSI Outreach Demonstration Programs, which helped SSA to learn a great deal about how third parties could help the agency to find and serve aged and disabled individuals. SSI Outreach tested a number of approaches. Homeless individuals were one of the target populations within those projects. SSA learned a great deal from SSI Outreach about how to more effectively serve individuals who were homeless and in underserved populations. Some of the findings were that third-party entities could successfully:

- Assist individuals with completing applications for benefits;
- Track claimants and provide assistance in response to SSA requests for additional information;
- Conduct presumptive disability screenings;
- Refer individuals for other needed services.

Lessons Learned. SSA is aware that our complex disability program is difficult for many individuals with severe disabilities to understand, and that special efforts must be made to provide application assistance. Because of variations in local needs, SSA has not developed a national outreach program; however, we have examined our past and current outreach efforts, and have determined methods that work well and have the potential to prove to be cost-effective strategies for improving our services to individuals who are experiencing homelessness. With this set of cooperative agreements, SSA intends to take the best ideas from current agency outreach efforts (*i.e.*, ''best practices''), as well as the most effective approaches from the SSI Outreach projects. The features of effective efforts that we intend to incorporate in these projects include:

- SSA and DDS collaboration with service providers that have expertise in identifying, engaging, and assessing applicants who are homeless;
- Identifying contacts within SSA and the grantee organizations to facilitate communication and problem resolution;
- Presumptive disability benefits for claimants with a high probability of being found disabled under Social Security's rules;
- Grantee assistance to SSA in providing direct help to claimants in completing the application process, maintaining contact with SSA while the decision is pending, obtaining medical evidence, and providing post-eligibility assistance; and
- SSA training and technical assistance to grantees.

D. Project Goals and Objectives

The goal of these cooperative agreements will be to demonstrate efficient, replicable, and sustainable approaches for identifying individuals who are potentially eligible for benefits under any Social Security disability program, and providing direct assistance to these individuals in the benefit application process. By efficient, we mean those methods that find and assist potentially eligible individuals, minimizing the burden of application for them, while conserving both public and private resources. By replicable, we mean approaches and methods which could be used in other settings with similar results. By sustainable, we mean methods that can continue after the cooperative agreement funding from SSA ends.

The core objectives for the projects is to identify homeless individuals who are potentially eligible for benefits, and to provide assistance to project participants that results in faster claim decisions and higher initial allowance (benefit approval) rates for those who are eligible for disability benefits under SSA's program rules. SSA will provide training to project staff in organizations which receive the cooperative agreement funding (grantees). The training will be designed to increase the knowledge that project staff have about the disability application process. The focus of the training will be on the disability determination process, specifically, on the role that the grantee can play in helping project participants to complete application paperwork, producing or locating valuable medical evidence, establishing claimant identity, verifying income and resources, providing information about the functional impact of disabling impairments, and assisting SSA in maintaining contact with claimants throughout the application process and after SSA makes a decision.

SSA is also interested in the degree to which the assistance that grantees provide to claimants results in improvements in quality of life, particularly in the area of achieving full community integration, including attaining stable housing, recovery, and employment.

E. Project Features

The HOPE projects will help SSA to demonstrate the feasibility of special approaches and services that use skilled medical and social service providers to identify, engage, and assist homeless individuals with disabling conditions. While SSA expects grantees to find homeless individuals through outreach, the focus of the cooperative agreement projects is to improve the knowledge and capacity of existing outreach providers to assist these individuals in the disability application process.

1. Use of Cooperative Agreement Funds

Grantees must use cooperative agreement funds to address the goals and objectives described in Section I.D. To that end, SSA is interested in

applications from social and medical service providers, such as community mental health centers, hospitals, Health Care for the Homeless clinics, faith-based organizations, and other community-based organizations that serve the target population.

SSA favors applicants that consider the full range of needs of individuals they serve, and that provide a continuum of care and case management. Since these projects are part of the broad Federal strategy to end chronic homelessness, SSA is interested in funding projects that provide assistance to project enrollees, not only with the disability benefit application process, but with obtaining other services that result in stabilization, recovery, and eventual entry or return to a productive lifestyle and full community integration. This includes becoming representative payees when a beneficiary is not capable of managing his/her benefits, and no other preferred payee is available.

Grantees must provide certain core functions, and may choose to perform other optional functions, as described in sections A and B:

A. Core Grant Activities—grantees who receive funds under this announcement must conduct outreach and provide assistance with the disability benefit application process. Specifically, grantees must:

• *Conduct outreach activities to locate homeless individuals with disabling impairments.* Applicants must have existing capacity to conduct outreach activities, and are not required to increase the actual amount of outreach activities, although they are expected to serve at least 50 individuals annually within their projects. Applicants are encouraged to use approaches that make use of existing resources, including staff, and to use cooperative agreement funds to improve their organizational capacity to provide assistance to homeless individuals. In other words, applicants are encouraged to use the cooperative agreement funds to develop sustainable approaches that can continue after cooperative agreement funds are no longer available.

• *Provide direct assistance to homeless individuals in the application process.* Activities must include helping these individuals to:

○ Schedule an appointment to apply for benefits;

○ understand the need to sign application and other forms needed to process the application;

○ complete application paperwork; and

○ communicate effectively with SSA staff when filing a claim.

• *Assist claimants with finding necessary documentation, including proof of identity, financial records, and medical records.* Many homeless individuals lose identity documents. Grantees will assist homeless individuals in establishing identity, and replacing lost immigration paperwork. Grantees will also help homeless claimants to document past medical treatment, and assist the DDS in obtaining evidence of past treatment. Finally, grantees will help claimants to find relevant financial records, including documenting and reporting any income and resources obtained throughout the disability application and appeal process.

• *Provide existing medical evidence in the grantee's medical records.*

• *Perform any necessary medical examinations, arrange for such examinations, and/or establish a collaborative relationship with an organization that will perform any examinations needed to make a disability determination.* Cooperative agreement funds may be used to pay for examinations conducted by psychologists, psychiatrists, general practitioners, or specialist physicians.

• *Assist claimants with attending consultative examinations, when necessary.* In general, evidence from treating sources that have an on-going relationship with claimants is preferred, and the DDS attempts to get such information before scheduling a ''consultative examination'' (CE) with a medical provider, who examines a claimant, and provides a report to the DDS. As noted above, the grantee may use cooperative agreement funding to arrange for an examination with a qualified provider; however, in some areas, grantees may have difficulty establishing such relationships with medical providers. In such cases, the grantee will notify the DDS immediately, so that the DDS examiner will know that a CE will be necessary. The DDS will pay for such examinations, when necessary, and the grantee will enable the claimant to attend the examination.

• *Provide information regarding the effect that a claimant's impairment has on the ability to perform work.* SSA needs information about how impairments limit a claimant's functioning, including restrictions in exertional activities, such as bending and lifting, as well as non-exertional factors, such as the ability to concentrate and/or persist in the performance of tasks. Grantees will provide information about claimants' ability to complete activities of daily living and instrumental activities of daily living, with and without assistance.

• *Maintain contact with the claimant throughout the determination process, and help the claimant to respond to requests for further information.* A key responsibility of grantees will be to help SSA maintain contact with claimants. This may include serving as an authorized ''representative'' for a claimant, but can also include informal steps, such as establishing a contact within the grantee agency for claimants served by the grantee.

• *Assist claimants with filing reconsiderations and appeals.* Claimants have appeal rights when they receive denials or partially favorable decisions. Appeal rights are described in SSA's publication, the The Appeals Process (SSA Publication No. 05–10041, April 1999) which can be found at *http://www.ssa.gov/pubs/10041.html.* If a claimant disagrees with SSA's decision on their initial claim, the grantee will assist the claimant in filing a timely reconsideration. If the claimant disagrees with a reconsideration decision, the grantee will assist the claimant in filing a timely request for a hearing.

• *Collaborate with and make referrals to other organizations to ensure favorable outcomes for claimants and beneficiaries, including working with agencies that provide:*

○ Mental health services;

○ supportive housing;

○ community-based health care providers;

○ employment rehabilitation services;

○ job placement;

○ benefit planning assistance and outreach;

○ veteran's health benefits;

○ substance abuse treatment;

○ translation and/or interpreter services; and

○ services to parolees and those in work-release programs

• *Assist claimants with participating in SSA electronic application and case processing initiatives.* SSA is moving in the direction of establishing an electronic disability claims process, known as ''eDib.'' While not every applicant will be capable of or required to file claims via SSA's electronic claims process, SSA will be establishing an electronic claim folder for all claimants. SSA plans to implement this new way of doing business in stages, by rolling out the process gradually in some locations. When possible, grantees should assist claimants to complete the Disability Report form (SSA i3368 or SSA i3820) on the internet, and claimants for disability insurance to complete the application form on-line.

Applicants should note that they may use cooperative agreement funds, as noted in Section I, Section E.1.B, to improve their capacity to operate in an electronic environment.

• *Attend training designed to improve the quality of core activities.* Required training is described in Section I.E.2.

• *Plan for project continuation when cooperative agreement funding ends.* SSA is interested in funding projects which focus on developing their organizational capacity to serve disability benefit claimants, and which make use of partnerships with other community service providers, and which leverage existing funding and resources to achieve outcomes.

B. Optional Activities—Cooperative agreement funds may also be used to perform other functions, particularly those that will help homeless individuals with disabling impairments to attain stable supportive housing, recover, attain employment, and use benefits to meet basic needs. Funds may be used to:

• *Develop and improve representative payee services.* Grantees may assume the responsibilities of a representative payee (payee), or may recruit and train volunteer payees. Examples of how funding may be used include setting up an accounting system; working with a local bank to establish a group and/or individual accounts; and training grantee staff, family members of clients, or community volunteers to provide payee services. Applicants may wish to refer to information for organizational payees available at *http://www.ssa.gov/payee/organ.htm* in order to get ideas about how to use funds to improve representative payment.

• *Screen claimants for ''presumptive disability (PD).''* Under SSA program rules, an SSI claimant may receive payments, for up to six months, based on a presumption of disability (PD). SSA or the DDS must have enough evidence that the claimant will meet SSA's strict definition of disability in order to make a PD determination. Federal regulations require SSA to make a final medical determination within six months following application. Applicants that propose to conduct PD screenings for SSA must include a description of the activities they will undertake to ensure the quality of the screening mechanism, including a description of the clinical qualifications of the screener. SSA is interested in achieving a low ''reversal rate'' for PD decisions. A PD reversal occurs when an individual is allowed PD payments, and then is formally denied SSI disability benefits after final medical development. Within these projects, SSA will actually make the PD determination; a grantee can do no more than make a PD recommendation. SSA will provide training in current agency PD rules to all grantees. Prior to implementing any additional presumptive disability procedures in cooperative agreement projects, SSA will establish guidelines to protect the integrity of the PD process. Grantees that choose to exercise the option to include a PD element in their project will work with SSA program staff, and local field office and DDS representatives, after award, to establish and implement any project-specific procedures that may be deemed necessary by SSA.

• *Establish and implement pre-release procedures.* Individuals who leave institutions, particularly state mental hospitals, prison, and institutions for the care of persons with mental retardation, are at high risk of becoming homeless. Projects may use cooperative agreement funds to establish and conduct discharge planning activities that include making arrangements to establish eligibility prior to discharge. Note that such arrangements are possible under current SSA rules, but that program rules do not allow for benefits to be paid prior to release or discharge. Individuals who had received SSI benefits that were suspended require a redetermination of eligibility prior to release or discharge so that SSA can determine current living arrangements and any other changes that might affect eligibility. If an applicant chooses to use project funds to conduct such activities, they may serve those who have never received disability benefits, as well as those whose benefits are in suspense, and those whose benefits have terminated.

• *Improve electronic services and information sharing.* As noted in the bulleted items under ''Core Activities'' (Section I.E.1.A), SSA is moving to an electronic disability application and case processing environment. All grantees will be required to make attempts to cooperate with the roll-out of this initiative, to the extent possible. But SSA encourages applicants to consider ways to work more effectively with SSA as the agency develops its electronic case processing initiatives. Grantees may use cooperative agreement funds to strengthen their ability to operate in this new environment, including purchasing scanners, fax machines, and laptop computers to be used by outreach workers in the field to complete forms with applicants. Grantees may also use cooperative agreement funding to establish internet service that will allow for the transfer of medical records to a secure Web site, when this option becomes available.

• *Develop a work entry/return-to-work program.* Disability benefits can provide income support that can help an individual obtain housing, and begin a recovery process. But many individuals with disabilities want the opportunity to work, and improve their quality of life. Grantees may choose to focus on helping homeless individuals to make a transition to independence, by focusing on rehabilitative, vocational, and other activities that help them work. The Ticket to Work and Work Incentives Improvement Act of 1999 directed SSA to establish the Ticket Program. Under the Ticket program, beneficiaries may receive employment services, vocational services, or other services from Employment Networks (ENs). ENs are public or private providers, or consortiums of providers, of such services. Grantees may become ENs, either on their own, or in cooperation with other organizations. For more information about the Ticket to Work program, and ENs, visit: *http://www.yourtickettowork.com/.* This Web site is maintained by Maximus, Inc., a private company that is helping SSA to manage the Ticket Program.

2. Training and Technical Assistance

Grantees must identify project staff to participate in training provided by SSA, DDS, and/or SSA training contractors. The training is designed to improve the ability of grantee organizations to assist claimants. Grantees will pay for all costs associated with attending training sessions, and may use cooperative agreement funds to pay these costs.

SSA will develop a standardized training curriculum, which will be delivered initially in group training sessions. SSA and DDS staff will deliver the training, which will be coordinated and supported through contractor assistance. While grantees are encouraged to send all project staff to training, they must identify one person who will attend all SSA training, and who will be responsible for training other grantee agency personnel. SSA believes this is necessary, because:

• Some grantees may find it impossible for all staff involved in the project to attend training, without interrupting critically important services;

• some grantee organizations may organize services in such a way that it is impractical to provide in-depth training to all staff who may assist project enrollees; and

• grantee organizations may experience turnover during project operation.

For the purposes of establishing a training travel budget, grantees should assume that all employees who attend the training will be required to travel for two days to the city in which their SSA Regional Office is located. Applicants can determine which SSA region they are in by visiting *http://www.ssa.gov/otherssasites/*, and scrolling down to the menu for Regional Offices, or by calling SSA's toll-free number at (800)–772–1213.

Grantees that have physicians on staff are strongly encouraged to require those physicians to review materials prepared by SSA's Office of Provider Relations, specifically, a publication and video entitled, ''Understanding Social Security Disability.'' The American Academy of Family Physicians has certified this material for continuing medical education credits (CME).

SSA, through its training and technical assistance contractor, will provide on-going technical assistance to grantees. When preparing a project plan and budget, applicants should assume that some staff time will be required to receive technical assistance, but no travel will be required.

3. Conferences

In addition to the group training sessions, grantees will be required to attend one two-day start-up conference in the Washington, DC, area, and to attend a two-day conference in the same location at the end of each project year. Minimally, the project director is expected to attend both conferences. Other project staff may attend, as well. Project budgets should assume that conference participants will need to stay in Washington for at least three nights, and that they will not receive any special room rates.

4. Meetings

The project director of each grant project will participate in monthly conference calls during the first six months of the project with a SSA Federal project officer (FPO) from the Office of Program Development and Research. Representatives from SSA regional offices, FOs, and other headquarters components, as well as DDS representatives, will participate as necessary.

Grantees will be expected to meet with representatives from SSA, including the local SSA FO and the state DDS after award notification, to discuss project start-up and procedures. SSA FPOs will participate in person or by conference calls in initial meetings. In general, project procedures will not require any deviation from existing operating procedures in FOs, or DDSs, although FOs and DDSs may work with grantees to create special procedures, particularly those that might lead to reductions in case processing time.

Grantees and SSA FOs and/or DDSs may establish a memorandum of understanding, or other written document designed to formalize agreements regarding case processing. If this type of activity occurs, grantees will consult with the SSA FPO, as well as the field office or DDS. *Applicants are prohibited from seeking letters of intent or agreement from local FOs, other SSA offices, or from state DDS offices prior to award notification.*

For the purposes of establishing a budget for meetings, applicants should assume monthly visits to the SSA field office(s) that serve project participants, as well as at least two meetings annually at the state DDS office.

Section II. Award Information

A. Statutory Authority and Catalog of Federal Domestic Assistance Number

These projects derive their authority from section 1110 of the Social Security Act (the Act). The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, Title 20, Parts 435 and 437. Applicants are urged to review the requirements in the applicable regulations. This program will be listed in the Catalog of Federal Domestic Assistance under Program No. 96.007, Social Security Administration—Research and Demonstration.

B. Type of Awards

Funding made available under this announcement will be in the form of cooperative agreements between the government and the awardee. Cooperative agreements are a legal instrument reflecting a relationship between the U.S. Government and a recipient when the principal purpose is to transfer a thing of value to the recipient and substantial involvement is expected between the Agency and the recipient when carrying out the activity contemplated by the agreement. Involvement will include collaboration or participation by SSA in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving data collection and evaluation, grantee training, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

SSA has chosen to use cooperative agreements for funding projects to serve homeless individuals in order to assure accountability for funding, and to maintain the ability to successfully monitor and evaluate projects.

C. Number, Size, and Duration of Projects

Congress appropriated $8 million in FY 2003 for SSA to conduct this set of outreach projects. SSA intends to fund projects over a period of three years, with initial awards being made by January 2004. SSA intends to enter into cooperative agreements for 4 years, subject to the availability of annual appropriations by Congress, and will fund project activities in years 1–3, with only data reporting activity in year four. No additional funds will be awarded in year four, so applicants must budget for year four activities in year 3, and conduct the data collection in year 4. SSA anticipates that projects will require a higher level of funding in the first year following award, in order to fund start-up activities. SSA plans to gradually reduce funding to projects over the 4 year period, so that additional projects may be funded.

Project budgets should reflect a reduction in dependence on cooperative agreement funding over the three year funding period, with a 25% reduction in the total budget in year two, and a 50% reduction in year three. Renewals of project funding will be determined annually, dependent on the availability of funding, and the determination that the award is in the best interest of the Government. SSA also expects projects to report follow-up data in the year following the conclusion of the project.

SSA may suspend or terminate any cooperative agreement, in whole or in part, at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination, together with the effective date.

SSA has reserved a portion of the $8 million appropriation to fund training and technical assistance to grantees and to evaluate the projects. Approximately $6.5 million will be available for awards under this announcement. SSA plans to fund approximately 30 projects, with awards of up to $200,000 annually. The exact number of awards will be determined by the size of awards.

D. Awardee Share of the Project Costs

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the cost of each project. The cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). For example, an entity that is awarded a cooperative agreement of $200,000 would need a non-Federal share of at least $10,526. The non-Federal share may be cash or in-kind (property or services) contributions.

Section III. The Application Process

A. Eligible Applicants

Public and private organizations, including nonprofit, profit-making, and faith-based organizations, may apply for cooperative agreement funding made available under this announcement. Organizations that are awarded funding must:

- Have existing expertise and capacity for outreach to homeless and other underserved groups;
- be able to provide culturally competent services that are fully accessible to the target population, including individuals that require accommodations;
- be a direct provider of health care services or provide referrals and assistance to clients in obtaining health care services.

Cooperative agreements may not be awarded to:

- Any individual;
- Social Security Administration FOs;
- State DDS offices; or
- Any organization described in section 501(c) (4) of the Internal Revenue Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611).

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-applicants, subgrantees or subcontractors.

All applicants for Federal grants and cooperative agreements are required to provide a Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*Grants.gov*). Organizations should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

B. Targeted Population

Congress intended funding made available by SSA under this announcement be used to provide outreach to homeless and ''other under-served'' populations. President George W. Bush also established a goal to end chronic homelessness, and has directed Federal agencies to cooperate to achieve that goal. Therefore, this set of cooperative agreements will target homeless adults and children who have physical and/or mental impairments that might qualify them as ''disabled'' under Social Security's rules. Under-served homeless individuals include, but are not limited to, persons:

- With serious mental illness;
- with HIV infection;
- with limited English proficiency;
- with cognitive impairments; and
- who are disabled veterans.

Although SSA intends for most projects funded under this announcement to serve individuals who need assistance with applications for SSI benefits, projects may assist disabled or elderly homeless persons who are insured for disability, retirement and/or survivors benefits.

Cooperative agreement awardees must make concerted and assertive efforts to provide appropriate services for project participants with limited English proficiency, those who need accommodations related to a disability, and those who have needs for culturally sensitive services. In particular, applicants should show how they intend to assure that participants from diverse populations are served by the project.

Applicants must specify by district, county, municipality, or state the geographic area to be covered (if more than one site is proposed, the geographic area for each must be specified).

C. Costs

Federal cooperative agreement funds may be used for allowable costs incurred by awardees in conducting required and optional project activities, as described in Section I, Section E.1. These costs could include administrative and overall project management costs, within the limitations established in this announcement.

Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No Social Security or SSI beneficiary can be charged for any service delivered under a HOPE cooperative agreement. Cooperative agreement funds may not be used to create new benefits or extensions of existing benefits.

Section IV. Program Requirements

A. General Requirements

Each application must include a brief project abstract that does not exceed one page in length before the narrative. The application narrative must not exceed 30 pages. Applicants must identify targeted age group(s) and location of the targeted service area(s) (*e.g.*, district, municipality or county, and/or independent city). The narrative must include an implementation plan that shows how the applicant will:

1. Finalize the management information (MI) system data collection elements and procedures with SSA and the evaluation contractor, described in Section IV.B, within 90 days after award;
2. Report data elements, as described in Section IV.B and C.
3. Develop and submit quarterly reports that contain progress and status toward achieving goals and objectives, and MI data updates to the Office of Acquisition and Grants (OAG);
4. Develop and submit quarterly financial reports to SSA, OAG;
5. Meet with SSA Project Staff and other grantees for an initial 2 day meeting/conference in Washington, DC, within the first 90 days following award;
6. Begin to enroll participants within 120 days after award;
7. Provide a description of any planned changes to the project design for approval by SSA prior to implementation;
8. Cooperate with SSA and any contractor in connection with these projects in scheduling and conducting site visits;
9. Implement an ongoing management and quality assurance process that uses MI data;
10. Conduct activities designed to improve organizational capacity, gradually reduce reliance on cooperative agreement funds, and sustain the project activities after cooperative agreement funding is no longer available.
11. Attend an annual SSA conference in Washington, DC, participate in panel and small group discussions, and make project presentations; and
12. Coordinate project activities with SSA's FO and the DDS in the grantee's state. (*Applicants should not request*

letters of intent or commitment from SSA FOs. SSA will secure FO cooperation.)

B. Evaluation

The projects will work with an evaluation contractor who will conduct an independent evaluation of outcomes, impacts, and benefits of the HOPE projects. Grantees must make data collected in the projects available to the evaluation contractor, as specified by the evaluation contractor under the direction of SSA.

The purpose of the evaluation is to assess the extent to which the projects are successful in achieving the goals, objectives, and outcomes of the projects.

The evaluation results will be used to assist SSA in identifying possible changes in policies or procedures that could enhance service to the public or otherwise improve administration of the program. The evaluation reports will be disseminated to others involved in providing community-based services to individuals who are homeless or members of under-served populations. To the extent possible, project data will be used to conduct cost-benefit analyses, which will help SSA to answer not only the question of whether the activities conducted in the project affect outcomes for program claimants, but how much they affect outcomes, and at what cost.

1. Enrollment Guidelines

Each grantee is required to enroll at least 50 individuals in their project. SSA encourages grantees that serve large numbers of homeless individuals attempt to achieve higher enrollment numbers. In order to be considered a project participant, and to receive services as a participant of any HOPE project, an individual must be enrolled by the grantee, using the reporting mechanism described in Section II.C.1.

Grantees may enroll individuals who have not yet filed an initial application, as well as those whose benefits are in suspense or terminated. Grantees may not enroll individuals who have pending applications with SSA, nor those who have already filed for a reconsideration or appeal of a denial or partially favorable decision. The grantee may, of course, continue to serve such individuals, but for the purposes of enrollment and data collection, grantees must follow these guidelines. Individuals who are served by the grantee that are not enrolled are not eligible to receive any special case processing consideration that is accorded enrollees. Allowing for enrollment of those whose benefits are suspended or terminated will allow projects that focus primarily on pre-release activities to meet enrollment targets.

Grantees may enroll individuals that they have already had contact with prior to award of the cooperative agreement, provided that the individual has not already filed a claim. The grantee may provide services to individuals who refuse to sign the consent forms described in Section II.C.2, but they may not enroll or report data to SSA on individuals who refuse to sign forms indicating that they authorize release of personal information.

C. Data Collection

1. Data Elements

SSA's evaluation contractor will develop and maintain a secure interactive Web site to collect evaluation information from the grantees. Grantees will log-on to the Web site and input information on each project enrollee monthly, which will then be readily accessible to the contractor and to SSA. ''Project enrollees'' are defined in Section II.B.1.

All data elements are to be reported using precise definitions, which will be developed by the evaluation contractor and approved by SSA. Adherence to such definitions is crucial to the comparability of the data across project sites. Grantees must report these elements on the secure Web site established by the contractor.

Specific instructions will be available at the time that the projects begin enrollment. The data elements below will be entered on the secure Web site monthly, except as noted:

- The project enrollee's name, date of birth, and social security number (report only at time of enrollment);
- Time (in hours) spent developing the medical evidence;
- Time (in hours) spent providing other forms of application assistance;
- The date of all grantee contacts with SSA during the application process, identification of an issue category, and an indication of whether the issue was resolved, or if further follow-up will be necessary;
- The date the project enrollee received notice of the determination;
- Whether a recommendation for presumptive disability (PD) benefits was made by the grantee;
- If so, whether SSA adopted the PD recommendation;
- A description of the living situation of the project enrollee on the date that the individual files a claim for benefits, to include:
- A description of the living situation of the project enrollee on the date that the individual files a claim for benefits, to include:
- Dwelling type:
- Living on the street (in doorways, on sidewalks, etc.);
- Other outdoor location;
- Other place not meant for human habitation (*e.g.*, abandoned buildings);
- Living with friends or relatives;
- Foster care;
- Halfway house or group home;
- Correctional facility;
- Institution;
- Emergency or transitional shelters;
- Housing units containing people living doubled up with family members or friends;
- Other
- Unknown
- A description of the living situation of the project enrollee, one year following the date that the individual files a claim for benefits, and eighteen months following application, to include:
- Dwelling type:
- Living on the street (in doorways, on sidewalks, etc.);
- Other outdoor location;
- Other place not meant for human habitation (*e.g.*, abandoned buildings);
- Living with friends or relatives;
- Foster care;
- Halfway house or group home;
- Correctional facility;
- Institution;
- Emergency or transitional shelters;
- Housing units containing people living doubled up with family members or friends;
- Other
- Unknown
- Representative Payee information
- Did the grantee recommend a payee (report when recommendation is made, and any changes)
- When benefits start, report if the grantee is the payee, or if the grantee found another payee.

2. Privacy

All personal information collected by SSA is protected by the Privacy Act of 1974. All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing and storage of paper/computer records/data. All applications must describe proposed practices for addressing clients' privacy and obtaining informed consent for any disclosure. The plan described in the applicant's project description must address the following elements:

- The development and use of a consent form that will allow the grantee to disclose clients'' personal

information to SSA. SSA will provide a suggested format for the consent form, which may either be adopted by the grantee, or tailored to include any state or agency-level requirements. Applicants selected under this announcement must provide SSA with a copy of the consent form. The Federal Project Officer must approve this consent form prior to the enrollment of any project participants.

• The use of Form HIPAA SSA–827, *Authorization to Disclose Information to the Social Security Administration*. This form is required as written authorization from a claimant for SSA to obtain information required for processing an application for disability benefits.

• The use of Form SSA–3288, Social Security Administration's *Consent for Release of Information.* This form will allow SSA to give information concerning the client to the grantee and to the evaluation contractor.

• If necessary, the grantee will attain the approval of their Institutional Review Board (IRB), and furnish SSA with a copy of the approval document.

Copies of Forms HIPAA SSA–827 and SSA–3288 can be obtained on-line through the SSA Web site: *http://www.socialsecurity.gov/.*

3. Training Data

Grantee staff that attend training will complete a pre-training test of knowledge regarding the disability program, as well as a post-training test. They will also complete a training evaluation form at the time of training. The pre and post training tests will provide measures of the impact of training on knowledge about the disability application and decision process. The participant evaluation will provide a measure of the perceived value and quality to the training.

D. Reporting

Grantees will be required to submit quarterly reports to SSA, OAG, within 30 days following the end of each quarter (using the initial award date as the project start date). These reports will assist SSA in providing proper oversight and technical assistance to grantees.

Quarterly Report Format

• Description of the project (first quarter report only);
• Actions taken during the quarter;
• Planned activities for upcoming quarter(s);
• Number of project participants enrolled, to date, and at the close of the report period;
• Number of individuals who refused to enroll;
• Any problems or proposed changes in the project; and
• Additional summary information.

E. Monitoring

SSA FPOs will be responsible for ensuring the effective implementation of each cooperative agreement. SSA project personnel (SSA FPO and/or other staff) expect to visit each project at least once in each year of the cooperative agreement. In addition, Regional or field office personnel may accompany SSA FPOs on site visits. The design of this project anticipates frequent interaction between the local FO, the state DDS office, and the grantee. SSA project staff will hold conference calls on a national, regional, and/or local basis at least once monthly during start up of the projects (six months following award), and at least quarterly during the rest of the project period. The purpose of these calls will be to coordinate activities across the project sites, resolve problems, and provide oversight, support, and technical assistance to all parties.

F. Technical Assistance

SSA will provide technical assistance to the grantees and will monitor and evaluate the progress of the projects. Technical assistance will be provided with the support and assistance of a contractor. Awardees will be informed of the procedures for accessing technical assistance within 60 days following award. Grantees will be notified by email about any changes in or additions to technical assistance procedures.

Section V. Application Review Process and Evaluation Criteria

A. Application Process

The cooperative agreement application process consists of a one-stage, full application. Independent reviewers will competitively review and score the application, using the evaluation criteria specified in this announcement (see Section V).

B. Application Requirements

Applications will be initially screened for responsiveness to this announcement. If judged irrelevant, the application will be returned. Also, applications that do not meet the applicant eligibility criteria in Section III.A above will not be accepted.

1. *Number of Copies:* The applicant must submit one original signed and dated application and a minimum of two copies. The submission of seven additional copies is optional and will be appreciated, but will not affect the evaluation or scoring of the application.

2. *Length:* A project abstract of not more than one page must precede the narrative of each application. The program narrative portion of the application (Section III of the SSA–96–BK) may not exceed 30 double-spaced typed pages (or 15 single-spaced pages) on one side of the paper only, using standard (8½″ x 11″) size paper, and 12-point font. The attachments to support the program narrative count towards the 30-page limit. Resumes, job descriptions and letters of cooperation/collaboration do not count in the 30-page limit.

Section VI.B contains a detailed checklist for the application format.

C. Review and Evaluation

All applications that meet the deadline for application submission November 25, 2003, will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated. The results of this review and evaluation will assist the Commissioner in making award decisions.

Although the results of this review are a primary factor considered in making award decisions, the review score is not the only factor used. In selecting eligible applicants to be funded, consideration also may be given to achieving an equitable distribution of assistance among geographic regions of the country and to diverse populations.

Applications that are complete and conform to the requirements of this announcement will be reviewed competitively against the evaluation criteria specified in Section V.B. of this announcement. Applicants must complete the Form SSA–96–BK. See Section VI for instructions on obtaining Form SSA–96–BK.

Applications that pass the screening process will be independently reviewed by at least three individuals (primarily qualified persons from outside of SSA), who will evaluate and score the applications based on the evaluation criteria specified in Section V.B.

D. Application Approval

Cooperative agreement awards will be made pursuant to the availability of funds and at the discretion of SSA. The official award document is the ''Notice of Cooperative Agreement Award,'' which will provide the amount and purpose of the award, the duration of the agreement, the total project period for which support is contemplated, applicable reporting requirements, the amount of financial participation required from the applicant, and any special terms and conditions of the cooperative agreement.

E. Evaluation Criteria

There are three categories of criteria used to score applications: Capability; relevance/adequacy of project research design; and resources and management. The total points possible for an application is 100, and sections are weighted. The score for each application is the sum of its parts. Although the results from the independent panel reviews are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Commissioner will consider other factors as well when making funding decisions. For instance, the need to assure a proper geographic distribution of projects, or the need to target geographic regions with high rates of chronic homelessness may influence award decisions.

The following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses). The application narrative should include the following sections in this order.

1. Capability (30 points total)

These criteria will be used to assess the applicant's capability to develop and manage a project. SSA will consider the following:

- Evidence of successful previous experience related to services to individuals who experience chronic homelessness. (5 points)
- Evidence that the applicant will be able to provide or assist SSA in finding medical evidence to allow SSA to evaluate disability claims of project participants. (10 points)
- Documentation of experience of the Project Director and key staff. (5 points)
- Description of the qualifications, including relevant training and experience, of key project personnel, and the qualifications, including relevant training and experience, of project consultants or subcontractors, if built into project design. (5 points)
- In determining the quality of project personnel, the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, age, or disability. (5 points)

2. Project Design (30 points total)

The adequacy of project design will be judged by:

- A description of the project, including:
- How the project will be managed;
- The target population;
- Specific methods to be used, and
- A description of problems that may arise and specific measures that will be taken to mitigate them (*e.g.*, how dropouts and inadequate numbers of participants will be handled). (10 points)
- The extent to which the project design reflects careful consideration of the potential for achieving successful outcomes and for project replication. This includes evidence of:
- An approach to potential SSDI/SSI claimants that can reasonably be expected to be successful, given the characteristics and needs of the target population;
- Measurable methods for recruiting and serving the target population;
- Service delivery to populations with special cultural or language requirements;
- Consideration of the desired outcomes identified by SSA; and
- Accessibility of facilities and service delivery methods that eliminate or reduce barriers to participation by individuals with disabilities. (10 points)
- The extent to which goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable as indicated by a description of:
- Project goals and objectives;
- Outcome measures;
- Time frames for accomplishing project milestones; and
- The relationship of proposed activities to the stated project goals. (5 points)
- A description of how the applicant will organize to effectively work with SSA in the new electronic disability application environment. This may include, but is not limited to:
- Completing on-line forms;
- Using technology in outreach efforts; and
- Sending electronic medical evidence (files created in an electronic format compatible with SSA systems, or scanned files). (5 points)

3. Resources and Management (40 points total)

Resources and management will be judged by:

- A description of how the applicant will ensure that the perspectives of homeless individuals and persons with disabilities influence the operation of the project (*e.g.* representation on a project or organizational advisory board) (5 points)
- Evidence that the applicant has a working knowledge of Federal, State, and local programs that serve homeless or other under-served individuals (5 points)
- Evidence of facilities, equipment, supplies, and other resources, from the applicant organization that are adequate to achieve project goals (5 points)
- Evidence that the applicant works cooperatively with other community-based service providers, as well as local and state funders/regulators (5 points)
- Evidence that the applicant directly provides, or assists clients through referral and advocacy, to obtain a wide variety of services that lead to stabilization, recovery, and full independence, including, but not limited to:
- Primary health care services;
- Substance abuse and mental health treatment;
- Referrals for housing and supports to maintain housing;
- Employment and rehabilitation services;
- Job placement;
- Benefit planning assistance and outreach;
- Translation and/or interpreter services; and
- Services to parolees and those in work-release programs, when appropriate (10 points)
- The extent to which the budget is adequate to support the proposed project (5 points)
- The extent to which the applicant has included plans for sustaining project activities after cooperative agreement funding ends (5 points).

Section VI. Instructions for Obtaining and Submitting an Application

A. Availability of Forms

The Internet is the primary means recommended for obtaining an application kit under this program announcement. An application kit containing all of the prescribed forms and instructions needed to apply for a cooperative agreement under this announcement may be obtained at the following Internet address: *http://www.socialsecurity.gov/oag/grants.*

However, in the rare instances when an organization may not have access to the Internet, an application kit may be obtained by writing to: Grants Management Team, Office of Operations Contracts and Grants, OAG, Social Security Administration, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279.

Requests submitted by mail should include two return address labels. Also, please provide the name, title and telephone number of the individual to contact; and the organization's name, street address, city, state and ZIP code.

To ensure receipt of the proper kit, please include program announcement number (OPDR–03–02) and the date of this announcement in the request.

B. Checklist for a Complete Application

The checklist below is a guide to ensure that the application package has been properly prepared.

• An original, signed and dated application plus at least two copies are required. Seven additional copies are requested.

• The program narrative portion of the application (Section III of the SSA–96–BK) may not exceed thirty double-spaced pages (or fifteen single-spaced pages) on one side of the paper only, using standard (8½″ x 11″) size paper, and 12-point font. Attachments, that support the program narrative, count towards the 30-page limit. (Resumes and letters of cooperation or intent do not count within the 30 page limit.)

• Attachments/Appendices, when included, should be used only to provide supporting documentation. Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to reviewers.

• A complete application, which consists of the following items in this order:

Part I

• (Face page)—Application for Federal Assistance (SF 424, REV 4–88)

• Table of Contents

• Project Abstract (not to exceed one page)

Part II

• Budget Information, Sections A through G (Form SSA–96–BK)

• Budget Justification (in Section B Budget Categories, explain how amounts were computed), including complete subcontract organization budgets;

Part III

• Application Narrative and Appendices

Part IV

• Additional Assurances and Certifications—regarding lobbying and drug-free workplace; and

• Form SSA–3966–PC—acknowledgement of receipt of application (applicant's return address must be inserted on the form).

C. Guidelines for Application Submission

All applications for cooperative agreement projects under this announcement must be submitted on the prescribed forms included in the application kit. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

In item 11 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OPDR–03–02). The applicant also is encouraged to select a SHORT descriptive project title.

Applications must be mailed or hand-delivered to: Grants Management Team, DCFAM, Office of Operations Contracts and Grants, OAG, Social Security Administration, Attention: OPDR–03–02, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207–5279.

Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by November 25, 2003. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private-metered postmarks are not acceptable as proof of timely mailing.

Applications that do not meet the above criteria are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered.

Paperwork Reduction Act

This notice contains reporting requirements. However, the information is collected using form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Dated: September 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–24306 Filed 9–25–03; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under AGOA, lists the sub-Saharan African countries that are currently eligible for AGOA, and the sub-Saharan African countries that are currently ineligible for the AGOA.

DATES: Public comments are due at USTR by noon, Monday, October 20, 2003.

ADDRESSES: Submission by electronic mail: *FR0098@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Gloria Blue, Office of the United States Trade Representative, 600 17th Street, NW, Room F516, Washington, DC 20508, (202) 395–3475. All other questions should be directed to Constance Hamilton, Senior Director for African Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (title I of Public Law 106–200) amends Title V of the Trade Act of 1974

(19 U.S.C. 2461 *et seq.*) (the ''Trade Act'') to authorize the President to designate sub-Saharan African countries as eligible for duty-free tariff treatment for certain products under the Generalized System of Preferences program (GSP). The AGOA also authorizes the President to designate sub-Saharan African countries as eligible for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA (if the country also meets certain statutory requirements intended to prevent unlawful transshipment of such articles) if he determines that the country meets the eligibility criteria set forth in: (1) section 104 of the AGOA; and (2) section 502 of the Trade Act. To date, 38 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 10 currently ineligible countries, are listed below. Section 506A of the Trade Act provides that the President shall monitor, review, and report to Congress annually on the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country. The President's determinations will be included in the annual report submitted to Congress as required by Section 106 of the AGOA. Section 506A of the Trade Act and section 104 of the AGOA require that, if the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the Trade Act.

Beneficiary Sub-Saharan African Countries

The following have been designated as beneficiary sub-Saharan African countries:

Republic of Benin
Republic of Botswana
Republic of Cameroon
Republic of Cape Verde
Central African Republic
Republic of Chad
Republic of the Congo
Republic of Côte d'Ivoire
Democratic Republic of the Congo
Republic of Djibouti
State of Eritrea
Ethiopia
Gabonese Republic
Republic of The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of São Tomè and Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

Sub-Saharan African Countries Not Designated as Beneficiary Countries

The following have not been designated as beneficiary sub-Saharan African countries:

Republic of Angola
Burkina Faso
Republic of Burundi
Federal Islamic Republic of the Comoros
Republic of Equatorial Guinea
Republic of Liberia
Somalia
Republic of Togo
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: In order to facilitate the prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions to *FR0098@ustr.gov* in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''2003 AGOA Annual Country Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'' and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,
Chairman, Trade Policy Staff Committee.

[FR Doc. 03–24419 Filed 9–25–03; 8:45 am]
BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–55]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 23, 2003.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15200.

Petitioner: South Dakota Stockgrowers Association.

Section of 14 CFR Affected: 14 CFR 103.1(a) and (b).

Description of Relief Sought: To permit members of the South Dakota Stockgrowers Association to shoot coyotes and other predatory animals from two-place ultralight vehicles with a single occupant.

Docket No.: FAA–2003–15952.

Petitioner: Multi County Predator Control District.

Section of 14 CFR Affected: 14 CFR 103.1(a) and (b).

Description of Relief Sought: To permit Multi County Predator Control District to operate two-place powered ultralight vehicles with a single occupant in predator control operations within South Dakota.

[FR Doc. 03–24429 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration's Government/Industry Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures policy and development criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group will meet October 20 and 21, 2003 from 9 a.m. to 4:30 p.m. The Charting Group will meet October 22 and 23, 2003 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the FAA National Aeronautical Charting Office, AVN–500, 1325 East-West Highway, Silver Spring, SSMC #2, Room 2358, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd, PO Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528. For information relating to the Charting Group, contact Richard V. Powell, FAA, Air Traffic Airspace Management, ATA–100, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8790, fax: (202) 493–4266.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Government/Industry Aeronautical Charting Forum to be held from October 20–23, 2003, from 9 a.m. to 4:30 p.m. at the National Aeronautical Charting Office, AVN–500, 1325 East-West Highway, SSMC 2, Room 2358, Silver Spring, MD 20910.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions regarding recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 3, 2003, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 3, 2003. Public statements will only be considered if time permits.

Issued in Washington, DC, on September 22, 2003.

Richard V. Powell,

Chair, Government/Industry Aeronautical Charting Forum.

[FR Doc. 03–24430 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–PIB To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hattiesburg-Laurel Regional Airport, Hattiesburg, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hattiesburg-Laurel Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 27, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tomas E. Heanue, Executive Director of the Hattiesburg-Laurel Regional Airport Authority at the following address: 1002 Terminal Drive, Moselle, MS 39459.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hattiesburg-Laurel Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9885. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hattiesburg-Laurel Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 17, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Hattiesburg-Laurel Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 13, 2004.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2004.

Proposed charge expiration date: April 1, 2006.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $79,487.

Brief description of proposed project(s): Acquire air passenger boarding stairs, Expanding parking lot, Expand commercial apron, and Rehabilitate airport beacon and apron lights.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

In additoin, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hattiesburg-Laurel Regional Airport Authority.

Issued in Jackson, Mississippi on September 17, 2003.

Rans D. Black,

Manager, Jackson Airports District Office.

[FR Doc. 03–24432 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Seattle, WA

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice of intent to inform the public, Tribes, and agencies of changes made to the initial Notice of Intent for a proposed highway project along SR 99 in Seattle, King County, Washington. The initial Notice of Intent announcing that an Environmental Impact Statement would be prepared for the project appeared in the **Federal Register** on June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Barry Brecto (FHWA), 711 South Capitol Way, Suite 501, Olympia, Washington 98501 (telephone 360–753–9482); Kimberly Farley, WSDOT Urban Corridors Office, 401 Second Avenue South, Suite 560, Seattle, Washington 98104 (telephone 206–464–1227); and Sandra Gurkewitz, City of Seattle, 600 Fourth Avenue, Suite 401, Seattle, WA 98104 (telephone 206–684–8574).

SUPPLEMENTARY INFORMATION: The FHWA, Washington State Department of Transportation (WSDOT), and the City of Seattle will prepare an environmental impact statement (EIS) documenting the environmental impacts of alternatives to improve the Alaskan Way Seawall and existing SR 99 corridor that is partially served by the Alaskan Way Viaduct. The Alaskan Way Viaduct and Seawall are located in downtown Seattle, King County, Washington. The Alaskan Way Viaduct is one of two primary north-south limited access routes through downtown Seattle and is a vital link in the region's roadway system.

The purpose of the proposed action is to provide a transportation facility and seawall with improved earthquake resistance that maintains or improves mobility and accessibility for people and goods along the existing Alaskan Way Viaduct Corridor. The southern terminus of the project would be near S. Spokane Street. The north terminus would be Ward Street north of the existing Battery Street Tunnel.

Built in the 1950's, the Alaskan Way Viaduct is past the halfway point in its 75-year design life, and it does not meet current seismic design standards. Additionally, the soils around the foundations of the Alaskan Way Viaduct consist of former tidal flats covered with wet, loose fill material subject to liquifaction. The Alaskan Way Seawall, which is also vulnerable to earthquakes, holds these soils in place along the majority of the Alaskan Way Viaduct Corridor. Built in the 1930's, the Alaskan Way Seawall is in a state of disrepair and also does not meet current seismic design standards.

In addition, the Viaduct does not meet current roadway design standards for lane widths, shoulders, and ramp sight distances and tapers. These roadway deficiencies contribute to the high number and severity of traffic accidents on the Alaskan Way Viaduct. Four areas along this section of SR 99 are designated High Accident Locations.

Preliminary alternatives under early consideration include: Taking no action, replacing the Viaduct and Seawall in-kind, replacing the Viaduct and Seawall with a new elevated structure and a new seawall, replacing the Viaduct and Seawall with a tunnel, replacing the viaduct with a surface street, adding transit components, or combinations of these solutions.

The lead agencies have preliminarily identified the following key areas for discussion in the EIS:

- Local and regional transportation system
- Pioneer Square and Pike Place historic districts
- Neighborhoods, businesses, and residences
- Port of Seattle and Washington State Ferry operations
- Construction impacts along the Elliott Bay shoreline

Letters soliciting comments on the scope of the EIS, the purpose, need, and potential alternatives have been sent to appropriate Federal, State, and local agencies, and Tribes. Two meetings were held to identify the scope of issues to be addressed, the major impacts, and the potential alternative. Both meetings were conducted on June 28, 2001, at the Mountaineers Club, Olympus Room 300 Third Avenue West, Seattle, Washington. The first meeting, from 1 to 4 p.m., focused on input from agencies and Tribes. The second meeting from 5 to 8 p.m. was primarily for the public. In addition, a public hearing will be held following circulation of the draft EIS.

Comments and questions concerning this action and the EIS should be directed to FHWA, WSDOT, or the City of Seattle at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: September 19, 2003.

Mary E. Gray,

Environmental Program Specialist, Olympia, Washington.

[FR Doc. 03–24345 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–14095]

National Environmental Policy Act Implementing Procedures

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed order; request for comments.

SUMMARY: The FMCSA is publishing for public comment its draft Order on agency procedures for implementing the National Environmental Policy Act of 1969 (NEPA). Now that the FMCSA is a separate agency within the Department of Transportation (Department or DOT), it has developed its own draft procedures for complying with NEPA, other pertinent environmental regulations, Executive Orders, statutes, and laws to ensure that it actively incorporates environmental considerations into informed decisionmaking.

DATES: Submit comments on or before November 10, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2002–14095 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

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

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final FMCSA environmental Order at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. LaKisha R. Pearson or Mr. David R. Miller, Office of Policy, Plans, and Regulations (MC–PR), FMCSA, U.S. Department of Transportation, 400 Seventh St, SW., Washington, DC 20590–0001. Telephone: (202) 366–6408.

SUPPLEMENTARY INFORMATION:

Background

The FMCSA was established within the Department on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Public Law No. 106–159, 113 Stat. 1748 (December 9, 1999)). The FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. FMCSA activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies, the motor carrier industry, labor organizations, safety interest groups, and others.

The majority of the functions FMCSA inherited from the FHWA are safety-related functions that were transferred from the former Interstate Commerce Commission (ICC) to the Department when it was established in 1966 (49 U.S.C. 102 and 102 note). Additional functions inherited from the FHWA relating to registering motor carriers operating in interstate and foreign commerce were carried out by the ICC before 1996 and by the FHWA from 1996–1999.

When the FHWA assumed authority over motor carrier licensing in 1996, it did not adopt the ICC's environmental regulations because the FHWA had its own. The FHWA's environmental impact regulations at 23 CFR part 771, which are primarily geared to highway and urban mass transportation construction projects, contain a categorical exclusion (CE) for the promulgation of rules, regulations, and directives (23 CFR 771.117(c)(17)).

Implementation of FMCSA's NEPA Order

It is necessary for FMCSA to issue its own implementing procedures for carrying out its responsibilities under NEPA, 42 U.S.C. 4321, *et seq.*, as amended. FMCSA is soliciting public comments on the draft procedures before making this environmental procedures Order final. Except for most of the appendices, the full text of the draft Order is being published for public

comment. Proposed Appendix 2 relating to categorical exclusions is being published in full text because of its potential interest to the public. An electronic version of the complete proposed Order including all proposed appendices is available at *http://dms.dot.gov.* Reference the docket number at the heading of this document. To request a copy of the draft Order by mail, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

The proposed FMCSA NEPA Order would establish a process for assessing environmental impacts, and for the preparation of Environmental Assessments (EAs), Findings of No Significant Impacts (FONSIs), and Environmental Impact Statements (EISs) for FMCSA actions. The FMCSA proposes to use this Order in conjunction with NEPA, the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508, DOT Order 5610.1C, as amended, and other pertinent environmental regulations, Executive Orders, statutes, and laws for consideration of environmental impacts of FMCSA actions. It will also be used, to the fullest extent possible, to conduct analyses and consultations required by the environmental authorities noted above in conjunction with NEPA implementation to reduce redundancy, paperwork, time, and cost.

This proposed FMCSA Order supplements DOT Order 5610.1C, as amended. It is important that persons using the proposed FMCSA Order refer to those sections of the DOT Order 5610.1C, as amended, cross-referenced in this document. Reference to the DOT Order will provide a wider perspective on the issues, as well as provide details that may prove applicable to certain projects and actions.

The proposed FMCSA Order would apply to all FMCSA actions including the decision to conduct research activities, promulgate regulations, award grants, and conduct major acquisitions.

An area of particular significance is Appendix 2 that contains FMCSA's proposed ''categorical exclusions.'' As defined by the CEQ, a ''categorical exclusion'' or ''CE'' means a category of actions which do not individually or cumulatively have a significant effect on the environment and for which, therefore, neither an EA nor an EIS is required. In Appendix 2, the FMCSA has provided a detailed description of FMCSA actions and activities that FMCSA believes should be entitled to a ''categorical exclusion'' from NEPA review. The use of a CE is intended to reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs.

In developing FMCSA's list of proposed CEs, the FMCSA has collected certain documentation over a period of time showing that these actions do not typically have the potential to create significant environmental impacts. This supporting documentation consists of the following:

1. Motor carrier historical perspective explaining how no environmental documentation was required for years in motor carrier licensing proceedings or rulemakings with no potential for significant environmental impacts.

2. Copies (or data) of rulemaking actions published in the **Federal Register** where the public had *no objection* to their implementation based on environmental grounds.

3. CE determinations by other modal administrations, explaining the reasons why similar actions were so classified.

4. Written statements from FMCSA staff indicating that these actions should be classified as CEs.

5. Other pertinent environmental assessments, studies, etc.

Many of FMCSA CE determinations are based on the evaluations of similar actions of the former ICC and other current and former DOT modal administrations, such as, the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, and the Federal Highway Administration. The FMCSA's use of categorical exclusions will reduce excessive and needless paperwork for agency actions that have proven to have no potential for significant environmental impacts.

The following is a brief description of the appendices that are not published in full text in this document:

1. Proposed Appendix 1 contains an environmental checklist designed to help FMCSA officials determine the proper level of NEPA analysis and to identify areas of potential problems and concern.

2. As stated, proposed Appendix 2, FMCSA Categorical Exclusions, is set forth in full text in this notice.

3. Proposed Appendix 3 lists the FMCSA regulatory actions that are typically subject to an environmental assessment.

4. Proposed Appendix 4 contains the sample format of the document FMCSA will use to give public notice of a categorical exclusion determination.

5. Proposed Appendix 5 is a sample format for an environmental assessment cover sheet.

6. Proposed Appendix 6 is a sample format for an environmental assessment document.

7. Proposed Appendix 7 is a sample format for a Finding Of No Significant Impact.

8. Proposed Appendix 8 is a sample format for an FMCSA notice of intent to prepare an environmental impact statement.

9. Proposed Appendix 9 is a sample format for a cover sheet for an FMCSA Environmental Impact Statement.

10. Proposed Appendix 10 is a sample format for an FMCSA notice used when a draft, supplemental, or final Environmental Impact Statement is published in full text in the **Federal Register**.

11. Proposed Appendix 11 is a sample format for a notice announcing the availability of a draft, supplemental, or final Environmental Impact Statement.

12. Proposed Appendix 12 is a sample format for an FMCSA Record of Decision notice announcing that FMCSA has published a Final Environmental Impact Statement.

13. Proposed Appendix 13 contains instructions for a Department statement under section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)). This section requires DOT to make special effort to preserve the natural beauty of the countryside, public parks, and recreation lands, wildlife and waterfowl refuges, and historic sites. The proposed instructions would supplement the 4(f) requirements of Attachment 2 to DOT Order 5610.1(C).

14. Proposed Appendix 14 contains guidance on the appropriate level of air quality analysis needed for each FMCSA action.

15. Proposed Appendix 15 contains instructions on the CEQ requirements for distribution of environmental impact statements. The proposed appendix addresses draft, final, and supplemental EIS documents and notices of hearings and meetings related to those documents.

16. Proposed Appendix 16 contains a list of relevant environmental statutes and Executive Orders.

17. Proposed Appendix 17 contains a flow chart/decision tree depicting FMCSA's NEPA review process.

18. Proposed Appendix 18 contains information that supplements Chapter 2 of the proposed Order dealing with special areas (*e.g.*, hazardous materials, endangered species, etc.) that must be considered when implementing NEPA.

The FMCSA encourages full public participation during the comment period. Comments submitted will be considered in preparing a final FMCSA environmental Order.

Proposed Order

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Subject: National Environmental Policy Act Implementing Procedures and Policy For Considering Environmental Impacts.

Classification Code—M 5610.1

Office of primary interest—MC–PR (Office of Policy, Plans, and Regulations)

1. *Purpose.* This Order establishes policy and prescribes responsibilities and procedures for the Federal Motor Carrier Safety Administration's (FMCSA's) implementation of the following:

(a) National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, as amended.

(b) 40 CFR parts 1500–1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, as amended.

(c) DOT Order 5610.1C, Procedures for Considering Environmental Impacts, as amended on July 13, 1982 and July 30, 1985.

(d) Executive Order 11514, ''Protection and Enhancement of Environmental Quality,'' March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. *Action.* The Offices of Administration, Research, Technology, and Information Management, Policy and Program Development, Enforcement and Program Delivery, Chief Counsel and Civil Rights, Field Operations Service Centers, and Field Division Offices must ensure that the provisions of this Order are followed in the consideration of environmental effects of Federal Motor Carrier Safety Administration actions. Program managers must submit draft program guidance for implementing this Order to the Administrator for review and concurrence to ensure consistency with this Order.

3. *Changes.* Recommendations and amendments for improvement of these Federal Motor Carrier Safety Administration NEPA implementing procedures must be submitted to the Regulatory Development Division, MC–PRR, Office of Policy Plans and Regulation.

Table of Contents

Chapter 1. Introduction
A. Purpose.
B. FMCSA Policies.
C. Scope.
D. Applicability.
E. Legal Basis.
1. National Environmental Policy Act of 1969 (NEPA).
2. Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508).
3. Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts.
4. Other relevant environmental statutes, laws, and Executive Orders.
F. Common Environmental Acronyms.
G. Use and Organization of this Order.
1. Use.
2. Organization.
Chapter 2. FMCSA Responsible Parties, Duties, and Instructions for Implementing NEPA
A. Responsible Parties for NEPA Implementation
1. Administrator, Federal Motor Carrier Safety Administration.
2. NEPA Liaison—Associate Administrator for Policy and Program Delivery (MC–P).
3. Heads of Headquarters Offices and Divisions.
4. The Office of Administration (MC–M).
5. The Office of the Chief Counsel.
6. FMCSA Program Staff.
7. Field Operations Service Center Administrators.
8. Heads of Units, Divisions, and Offices.
9. The Field Environmental Quality Advisor (FEQA).
10. Field Operations Service Center Program Staff.
B. FMCSA's Decisionmaking Process for NEPA Implementation.
1. Normal Circumstances.
2. Timing of Agency Action.
C. Planning and Early Coordination.
1. Scoping.
2. Environmental Planning Process.
D. Environmental Documentation.
1. Actions Affected.
2. Categorical Exclusions (CEs).
3. Limitations on Using Categorical Exclusions.
4. Environmental Assessment (EA).
5. Finding of No Significant Impact (FONSI).
6. Environmental Impact Statement (EIS).
7. Agency Responsibility for Documents Prepared by Applicants or Proponents (See 40 CFR 1506.5).
8. Documents Prepared by Contractors.
9. List of Preparers.
10. Reducing paperwork in preparation of environmental documents.
11. Reducing delays in preparation of environmental documents.
12. Supplementation.
13. Signing FMCSA NEPA Documents.
14. Signature.
E. Special Areas of Consideration.
Chapter 3. Public Involvement, Legislative, and Interagency Coordination
A. Citizen Involvement and Public Notice Process.
1. Public Involvement (40 CFR 1506.6).
2. Notice of Intent.
3. Intergovernmental Review.
B. Proposals for Legislation.
1. Preparation.
2. Processing.
C. Mitigating Measures.
D. Inter-Agency Coordination.
1. Lead Agencies and Cooperating Agencies.
2. Distribution of Environmental Documents.
3. Adopting Environmental Documents Prepared by Other Agencies.
4. Review of Environmental Statements Prepared by Other Agencies.
5. Pre-decision Referrals to the Council on Environmental Quality.
Appendix 2—FMCSA Categorical Exclusions (CE)

Chapter 1. Introduction

A. Purpose

This Order provides information pertaining to environmental planning and establishes policy and procedures to ensure timely environmental review for appropriate Federal Motor Carrier Safety Administration (FMCSA) actions. Furthermore, this Order addresses the policies and responsibilities for FMCSA's implementation of the National Environmental Policy Act of 1969 (NEPA), as well as other pertinent environmental regulations, Executive Orders, statutes, and laws.

B. FMCSA Policies

1. NEPA establishes broad Federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The FMCSA is expected to manage those aspects of the environment affected by FMCSA activities, comprehensively integrating environmental policy objectives into planning and decisionmaking. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing FMCSA planners and decisionmakers. The FMCSA will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of FMCSA decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

2. The FMCSA will actively incorporate environmental considerations into informed decisionmaking, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. FMCSA personnel engaged in the NEPA process as participants, preparers, reviewers, and approvers will balance

environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of FMCSA operations. While carrying out its missions, the FMCSA will also encourage the wise stewardship of natural and cultural resources for future generations. Decisionmakers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

3. Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by Federal and DOT Orders, directives, and policy guidance. Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

4. The FMCSA will ensure NEPA compliance and will provide for levels and kinds of public involvement appropriate to the type of action and its likely effects, taking into account the recommendations as set forth in the CEQ regulations regarding public involvement.

a. The FMCSA will provide public notice of NEPA-related public meetings and hearings in the following manner:

(1) By publishing notice in the **Federal Register**, in local newspapers, newsletters, or by direct mailings of the availability of environmental documents so as to inform those persons and agencies who may be interested or affected;

(2) By posting notice on- and off-site in the area where the action is to be located; and

(3) By requesting comments on environmental documents to secure views either on the adequacy of the FMCSA action or the merits of the alternatives discussed or both. (*See* 40 CFR 1506.6).

b. When any other related authority provides specific procedures for public involvement, the responsible FMCSA official shall ensure that such procedures are addressed in the NEPA review process.

c. The FMCSA will involve the public in its decisionmaking and shall have as its purpose the full disclosure of FMCSA actions and alternatives to the public and giving the public a full opportunity to influence FMCSA decisions.

5. The FMCSA will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the agency mission in project planning and decisionmaking. Efficiency will be promoted through the following:

a. Awareness and involvement of the decisionmaker and participants in the NEPA process.

b. NEPA technical and awareness training, as appropriate, at all decision levels of the FMCSA.

c. Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

d. Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision.

e. Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

f. Integration of the NEPA process into all aspects of FMCSA planning at an early stage, so as to prevent disruption in the decisionmaking process; ensuring that NEPA personnel function as team members, supporting the FMCSA planning process and sound FMCSA decisionmaking. All NEPA analyses will be prepared by an interdisciplinary team.

g. Partnering or coordinating with Federal, State, Tribal and local governmental agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

h. Oversight of the NEPA program to ensure continuous process improvement.

i. Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

6. The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for FMCSA decisions involving activities outside the United States will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), the DOT Order, and the requirements of this Order. An environmental planning and evaluation process will be incorporated into FMCSA actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

C. Scope

1. The Federal Motor Carrier Safety Administration's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. Administration activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle (CMV) drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies; tribal governments; the motor carrier industry; labor safety interest groups; and others.

2. Any environmental impacts that result from FMCSA's oversight of motor carrier operations would most likely be in areas affecting air quality, noise, and hazardous materials transportation. Actions that may result in environmental impacts include, for example, the following:

a. Any action that may directly, indirectly, or cumulatively result in a significant increase in noise levels, either within a commercial motor vehicle's closed environment or upon nearby areas.

b. Any action that may directly, indirectly, or cumulatively result in a significant increase in the energy or fuel necessary to operate a commercial motor vehicle, including but not limited to the following: (1) Actions which may directly or indirectly result in a significant increase in the weight of a commercial motor vehicle; and (2) actions which may directly or indirectly result in a significant adverse effect upon the aerodynamic drag of a commercial motor vehicle.

c. Any action that may directly, indirectly, or cumulatively result in a significant increase in the amount of harmful emissions resulting from the operation of a commercial motor vehicle.

d. Any action that may directly, indirectly, or cumulatively result in a significant increase in either the use of or the exposure to toxic or hazardous materials in the manufacture, operation, or disposal of commercial motor vehicles or commercial motor vehicle equipment.

e. Any action that may directly, indirectly, or cumulatively result in a significant increase in the problem of solid waste, as in the disposal of commercial motor vehicles or commercial motor vehicle equipment.

f. Any action that may directly, indirectly, or cumulatively result in a significant depletion of scarce natural resources associated with the manufacture or operation of commercial motor vehicles or commercial motor vehicle equipment.

D. Applicability

1. This FMCSA Order applies to all FMCSA actions. Actions include: projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by FMCSA; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Actions do *not* include bringing judicial or administrative civil or criminal enforcement actions. *See* 40 CFR 1508.18(a). Examples of judicial or administrative civil or criminal enforcement actions would be regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

a. A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

b. To issue an appropriate Order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

2. These environmental procedures also apply to all non-Departmental applications to FMCSA for a permit, grant, certification, award, license, approval, or other similar action. For major categories of FMCSA actions involving a large number of applicants, the appropriate Program Office shall prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide. The appropriate Program Office shall also begin the NEPA review and planning processes as early as possible after receiving an application for items described above, advising any potential applicants to issues, such as the appropriate level and scope of any studies or environmental information that the agency may require to be submitted as part of the application, and the need to consult with appropriate Federal, tribal, State, regional, and local governments. See 40 CFR 1501.2(d) and 1507.3.

E. Legal Basis

1. National Environmental Policy Act of 1969 (NEPA)

NEPA sets forth a national policy that encourages and promotes productive harmony between humans and the environment. NEPA procedures require that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment.

2. Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508)

The CEQ regulations establish policy requirements that are binding on all Federal agencies for implementing NEPA and related statutory requirements.

3. Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts

DOT Order 5610.1C sets the policy and procedures that supplement the CEQ regulations and applies them to DOT programs. The Federal Motor Carrier Safety Administration must comply with the CEQ regulations and the provisions of the DOT Order.

4. Other Relevant Environmental Statutes, Laws, and Executive Orders

Appendix 16 lists other relevant environmental statutes, laws, and Executive Orders that must be reviewed for compliance.

F. Common Environmental Acronyms

ACHP Advisory Council on Historic Preservation
AC&I Acquisition, Construction, and Improvement
CAA Clean Air Act
CBRA Coastal Barriers Resource Act
CD Consistency Determination
CE Categorical Exclusion
CED Categorical Exclusion Determination
CEQ Council on Environmental Quality
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CFR Code of Federal Regulations
CWA Clean Water Act
CZM Coastal Zone Management
CZMA Coastal Zone Management Act
DEIS Draft Environmental Impact Statement
DOT Department of Transportation
EA Environmental Assessment
EIS Environmental Impact Statement
E.O. Executive Order
ESA Endangered Species Act
FEIS Final Environmental Impact Statement
FEQA Field Environmental Quality Advisor
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSR Federal Motor Carrier Safety Regulations
FONSI Finding of No Significant Impact
FWPCA Federal Water Pollution Control Act (also commonly referred to as the Clean Water Act)
FWS Fish and Wildlife Service
FR **Federal Register**
HMR Hazardous Material Regulations
LESA Land Evaluation and Site Assessment
NAAQS National Ambient Air Quality Standards
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
NMFS National Marine Fisheries Services
NPDES National Pollutant Discharge Elimination System
NPS Non-Point Source
NRCS Natural Resources Conservation Service
NRHP National Register of Historic Places
NSPS New Source Performance Standard
PCB Polychlorinated Biphenyls
PL Public Law
PPR Project Proposal Report
RCRA Resource Conservation and Recovery Act
ROD Record of Decision
SDWA Safe Drinking Water Act
SEIS Supplemental Environmental Impact Statement
SHPO State Historic Preservation Officer
SIP State Implementation Plan
THPO Tribal Historic Preservation Officer
TSCA Toxic Substance Control Act
TSDF Treatment, Storage, and Disposal Facility
USACE U. S. Army Corps of Engineers (Former Acronym—COE)

U.S.C. United States Code

G. Use and Organization of this Order

1. Use

This Order will be used in conjunction with NEPA, the CEQ regulations, and as a supplement to DOT Order 5610.1C, as amended, for consideration of environmental impacts of FMCSA actions. It will also be used, to the fullest extent possible, to conduct analyses and consultations required by environmental laws other than NEPA, statutes, Executive Orders, and regulations in conjunction with NEPA implementation to reduce redundancy, paperwork, time, and cost.

2. Organization

Chapter 2 of this FMCSA Order implementing NEPA procedures and policies for considering environmental impacts supplements specific paragraphs in DOT Order 5610.1C, as amended. It is important that persons using this Order refer to those sections of the DOT Order 5610.1C, as amended, cross-referenced in this FMCSA Order. Reference to the DOT Order will provide a wider perspective on the issues as well as provide details that may prove applicable to certain projects and actions. Additional chapters and/or changes providing guidance in meeting new or changed requirements will be added to this Order as necessary.

Chapter 2. FMCSA Responsible Parties, Duties, and Instructions for Implementing NEPA

[Supplementary Instructions to DOT Order 5610.1C, 9/18/79, as amended 7/13/82 and 7/30/85]

A. Responsible Parties for NEPA Implementation

This FMCSA Order assigns the following NEPA implementation responsibilities:

1. Administrator, Federal Motor Carrier Safety Administration

a. *Responsibilities.* Acts on matters relating to NEPA implementation and is responsible for providing NEPA capabilities (40 CFR 1507.2) as follows:

(1) Establishes and maintains the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this Order. This capability can be provided through contract support, matrix (other modal) support, and permanent staff, with sufficient staff to ensure:

(A) FMCSA cognizance of the analyses and decisions being made; and

(B) Familiarity with the requirements of NEPA and the provisions of this Order by every person preparing, implementing, supervising, and managing projects involving NEPA analysis.

(2) Ensures environmental responsibility and awareness among personnel to most effectively implement the goals and policies of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, and notification through Project and Program managers to MC–P, and training and education will NEPA goals be realized.

b. *Environmental Analyses and Documentation.* Approves all environmental analyses and documentation for Administration-initiated actions, unless delegated to another FMCSA responsible official or another Federal agency. The Administrator may enter into contracts with a State or private entity to conduct initial environmental analyses and documentation, but the Administrator must review and approve all such environmental analyses and documentation and remains responsible for its scope and contents (see Section D.7. of Chapter 2). The Administrator delegates the following:

(1) With the exception of highly controversial EISs (as defined by Section 11.d of DOT Order 5610.1C), approval authority to Field Operations Service Center Administrators for FMCSA DEISs, FEISs, and SEISs for actions that originate within, and having effects confined to, their respective area;

(2) Authority for the appropriate FMCSA Administrator-level Program Office to approve highly controversial EISs (see Section D.6.b.(4) of Chapter 2); and

(3) For all other FEISs (non-controversial), only a notice of approval will be made to DOT (P–1) by the responsible Administrator-level Program Office via the Administrator.

c. *Decisions on How to Proceed with FMCSA Actions.* The Administrator, or the Administrator's designee, has authority to decide whether or, at a minimum, how to proceed with every action the FMCSA undertakes. Thus, the Administrator (unless his/her authority is delegated) is the decisionmaker and the responsible FMCSA official. (Authority to sign EISs as the responsible official will be governed by Section D.14.a. of Chapter 2). The Administrator makes the following delegations:

(1) The NEPA Liaison will act as the senior decisionmaker and senior environmental advisor for NEPA compliance and NEPA implementation of all FMCSA actions. The Administrator also delegates the responsibility to the NEPA Liaison to ensure accountability for implementation of the policies set forth in this Order. For Headquarters-originated actions, the Administrator delegates the responsibility to the NEPA Liaison to determine whether to prepare an EA, EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9) in consultation with the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation.

(2) The Field or Division Administrators or their delegated Federal, State, or Division Program Managers, in consultation with their FEQAs (see also Section D.13. of Chapter 2), will hold authority to determine whether to prepare an EA, EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9) for actions that originate within, and have effects confined to, their respective area. For Headquarters-originated actions, the NEPA Liaison makes this determination in consultation with the responsible FMCSA Program Manager.

2. NEPA Liaison—Associate Administrator for Policy and Program Delivery (MC–P)

a. Is the principal FMCSA environmental advisor and decisionmaker for the completion of the environmental analysis under NEPA, CEQ regulations, DOT and FMCSA Orders, and other environmental laws, statutes, and Executive Orders listed in Appendix 16. The Regulatory Development Division (MC–PRR), in the Office of Policy, Plans and Regulation is the Program Office that will assist the NEPA Liaison in carrying out these duties.

b. Is responsible for overseeing NEPA compliance and NEPA implementation of all FMCSA actions. The NEPA Liaison ensures accountability for implementation of the policies set forth in this Order and that all necessary NEPA analyses (CE, EA, and EIS) are completed before initiation of an FMCSA action.

c. Reviews all FMCSA proposed projects and advises the responsible FMCSA official (*e.g.*, the FEQAs or Project Manager) on the appropriate level of environmental analysis and documentation needed for the proposal. For CEs, EAs and non-controversial EISs, the NEPA Liaison may direct the

FEQAs or program staff to determine the appropriate level of environmental analysis and documentation needed for the proposal.

d. Provides expert advice on NEPA-related matters to FMCSA Heads of Offices, Divisions, and Field Operations Service Center Units.

e. Acts as the intra-agency and interagency liaison and coordinates NEPA-related matters on a national basis, and is the principal contact for CEQ on all other FMCSA actions.

f. Provides and periodically updates this FMCSA Order, program guidance and policies after consultation with the Chief Counsel, Heads of Offices, Divisions, and Field Operations Service Center Units. Updates must comply with 40 CFR 1507.3 requirements for public notice and CEQ review.

g. Serves as FMCSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

3. Heads of Headquarters Offices and Divisions

a. Coordinate with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responsibility.

b. Serve as the responsible agency officials under NEPA and CEQ regulations for actions subject to their approval.

c. Ensure accountability for implementation of the policies set forth in this Order.

d. In consultation with the NEPA Liaison, ensure that FMCSA staff responsible for the supporting function of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out FMCSA's responsibilities.

e. Ensure completion of all environmental analysis and documentation for Headquarters Office-originated actions in consultation with environmental staff and the NEPA Liaison. This responsibility includes ensuring that the appropriate environmental planning, analyses, and documentation are completed for the respective programs and actions.

f. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

4. The Office of Administration (MC–M)

At the current time, the General Services Administration (GSA) is responsible for all building acquisition and construction projects to meet the needs of the FMCSA. The GSA is currently responsible for, and is required to comply with, all statutory and regulatory requirements of NEPA for such projects. In the event the FMCSA is authorized by Congress or the GSA delegates authority for the purchase, lease, and/or acquisition of real property in the future, the FMCSA's Office of Administration will assume primary responsibility for all necessary environmental analyses and documentation needed for building acquisition and construction projects, in consultation with the FMCSA's Office of Chief Counsel. The FMCSA will coordinate such environmental analyses, as appropriate, with the interested general public, as well as other Federal, State, local, and Tribal government agencies.

5. The Office of the Chief Counsel

a. Responsible for legal interpretation of NEPA and related authorities, and represents FMCSA in litigation under such authorities.

b. Must approve the implementation of the procedures of FMCSA Environmental Orders in consultation with the NEPA Liaison, NEPA Field Environmental Quality Advisors (FEQAs), MC–PR, and MC–RIA (Office of Data Analysis and Information Systems that would be responsible for acquiring a contractor for environmental support), for actions originated by the Administrator.

c. Responsible for the review and approval of FMCSA and non-FMCSA environmental documents submitted for Associate Administrator level review. See Section D.6.b.(3) of Chapter 2 for information on legal review of Environmental Impact Statements (EISs).

d. Responsible for the review and approval of guidance and training concerning this Order, in consultation with the NEPA liaison and the Professional Development and Training division.

6. FMCSA Program Staff

a. For purposes of this FMCSA Order, this includes all FMCSA employees responsible for the management and implementation of program actions, such as, promulgating regulations, project planning and development, project management, and research.

b. Program staff are responsible for:

(1) Developing and maintaining a thorough understanding of NEPA requirements and the requirement of related authorities, and of the policies articulated in this FMCSA Order, DOT Order 5610.1C, as amended, as these pertain to their program areas with the assistance of the NEPA Liaison and the FEQA.

(2) Ensuring that NEPA and related authorities are complied with, as early as possible in the planning of any action within their program areas.

(3) Coordinating their programs, activities, and projects with FEQAs and the NEPA liaison, as appropriate.

(4) Implementing all mitigation and other commitments resulting from NEPA compliance for actions under their authority.

(5) Initiating early consultations with Field Operations Service Center Units, the FEQAs, Heads of Offices and Divisions, the NEPA liaison, as appropriate if uncertain regarding the need for environmental analysis or documentation for any project. The Field Operations Service Center Administrator will promptly notify the Policy, Plans, and Regulations Office Director (MC–PR) and the NEPA Liaison if uncertainty for NEPA review persists.

(6) Notifying the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

7. Field Operations Service Center Administrators

a. Are accountable for execution of FMCSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

b. Serve as the ''responsible agency official'' under CEQ regulations (40 CFR 1506.5(c)) with respect to the environmental effects of actions under their jurisdiction.

c. Maintain FEQA within their staffs, augmented as necessary through interagency agreements and contracts, to ensure field interdisciplinary competence in environmental matters.

d. In consultation with the FMCSA NEPA Liaison, ensure that all field staff with responsibility for planning, approving, and implementing Commercial Vehicle Safety Plan grants, etc., receive training in how to carry out FMCSA's responsibilities under NEPA and related authorities.

e. Comply with all environmental laws. What may appear to be a good idea initially may not be environmentally acceptable. It is, therefore, important that alternatives to a proposed action be available. Coordination of FMCSA environmental analyses and documents with Federal, State, local, and tribal officials may be necessary. Questions concerning environmental matters should be

directed to the FEQA and appropriate Field Operations Service Center staff.

f. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

8. Heads of Units, Divisions, and Offices

a. Ensure that all environmental analyses and documentation for FMCSA actions (except building acquisition and construction actions) they initiate, or are directed by higher authority to initiate, are completed.

b. Ensure that a FEQA, Environmental Project Manager, and Environmental Specialists are available within the Field Operations Service Center territory.

c. Ensure that Field Operations Service Center Units and Field Division Offices are notified as soon as possible of any needed environmental analyses or documentation required for field proposed actions and projects.

d. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

9. The Field Environmental Quality Advisor (FEQA)

a. The Field Environmental Quality Advisor is the center of expertise maintained at the Field Service Unit in which knowledge in NEPA-related environmental matters and other related authorities, such as the National Historic Preservation Act, the Clean Air Act, and the Endangered Species Act, is vital.

b. The FEQA will be a collateral duty among others assigned to the employee.

c. The FEQA will be located at the Field Service Unit where it can influence decisionmaking early in FMCSA's planning or preparation for any project or action subject to review under NEPA and related authorities.

d. The FEQA is responsible for participating in FMCSA planning and decisionmaking, for advising the Administrator, the Office Heads, the Field Administrators, and other decisionmakers, and for providing training and technical assistance to all pertinent FMCSA employees and contractors.

e. Maintains interdisciplinary expertise in environmental matters, through the employment of qualified staff and/or by interagency agreement or under contract.

f. Reviews all documentary products of FMCSA NEPA analyses, and assists program staff in ensuring that such products, and the analyses they report, are adequate and defensible.

g. Maintains records of FMCSA NEPA compliance activities.

h. Routinely interacts with, and is assisted by, the NEPA Liaison.

i. Maintains needed guidance material, and recommends updates and/or changes to this FMCSA Order, as appropriate. Updates must comply with 40 CFR 1507.3 requirements for public notice and CEQ review.

j. Develops and maintains an up-to-date checklist for use in determining whether an action requires an environmental assessment or impact statement.

k. Notifies the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

10. Field Operations Service Center Program Staff

a. Ensure completion of all environmental analyses and documentation for FMCSA actions designated to them.

b. Assist Headquarters Units, where appropriate, with their implementation of the procedures set forth in this Order.

c. Coordinate these environmental analyses and documents with Federal, State, local, and tribal officials as necessary.

d. Maintain close coordination with appropriate Field Division Office elements during the execution of these tasks. Questions concerning environmental matters should be directed to appropriate Field Operations Service Center Unit staff and the FEQA.

e. Empower the FEQA to advise and assist in planning and decisionmaking on actions that could affect the human environment, in a way and at a time in the planning and decisionmaking process that maximizes the effectiveness of the FEQA's advice and assistance.

f. Ensure that all Field program staff involved in planning and decisionmaking about actions that could affect the human environment are made aware of FMCSA's responsibilities under NEPA and related authorities, are acquainted with this FMCSA Order, DOT Order 5610.1C, as amended, and other NEPA- or CEQ-related guidance, are held accountable for the quality of their actions and decisions, and are required to coordinate effectively with the FEQA.

g. Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

B. FMCSA's Decisionmaking Process for NEPA Implementation (see Flow Chart in Appendix 17)

1. Normal Circumstances

Under normal circumstances, FMCSA's compliance with the procedural requirements of NEPA is handled as follows:

Step 1: Program staff determine a purpose and need for a particular action, and develop a preliminary description of the action.

Step 2: In consultation with, or at the direction of the FEQAs or NEPA Liaison, program staff determine the appropriate level of NEPA analysis and documentation required.

Step 3: Program staff and the FEQA, in consultation with the NEPA Liaison (or designee), arrange for necessary environmental analysis and documentation to take place, including public involvement for preparation of EAs and EISs [40 CFR 1501.4(b) and 1506.6]. Program staff make sure that there is written documentation of all environmental analyses in the FMCSA docket or record. When legal issues and/or public controversy are involved in the action or NEPA analysis, program staff must notify the FEQAs and Field Administrators, the NEPA Liaison, MC–P, and Chief Counsel, to afford them an opportunity to participate.

Step 4: Program staff, in consultation with, or with oversight by, the FEQAs and the NEPA Liaison ensure that the appropriate analysis and documentation are completed, and that documents are circulated and filed in accordance with the requirements of law, the CEQ regulations, this FMCSA Order, DOT Order 5610.1C, as amended, any other NEPA-related guidance, statutes, Executive Orders, and related authorities.

Step 5: Program staff, assisted as needed by the FEQAs and the NEPA Liaison, provide the results of the NEPA review process to the relevant FMCSA decisionmaker(s).

Step 6: The decisionmaker(s) decides whether and how the action will proceed, and if it proceeds, what, if anything, will be done to mitigate adverse impacts.

Step 7: Program staff, as assisted by the FEQAs and the NEPA liaison, ensure that any required final public notifications of the environmental decision are issued.

Step 8: If the project or action has been approved by the decisionmaker, it proceeds, subject to whatever mitigation (if any) and monitoring activities have been chosen.

Step 9: If mitigation is to be performed, program staff, FEQAs, and the NEPA liaison monitor the activity to ensure that it is carried out.

The extent to which all of the above steps in FMCSA's environmental decisionmaking process can be carried out varies with the type of action under consideration (see Chapter 3).

2. Timing of Agency Action

a. FMCSA is adopting the availability of, and the review process for, draft EISs as set forth at 40 CFR 1506.10. No decision on the FMCSA's proposed action shall be made or recorded (see 40 CFR 1505.2/RODs in cases requiring an EIS) by the agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice by EPA described in 40 CFR 1506.10(a) for a draft environmental impact statement (DEIS); and

(2) Thirty (30) days after publication of the notice by EPA described in 40 CFR 1506.10(a) for a final environmental impact statement (FEIS).

b. *Exceptions.* An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in subparagraph 2(a)(2) above and publish a decision on the final rule simultaneously with publication of the notice of the availability of the FEIS. See 40 CFR 1506.10(b)(2).

c. *Time Periods May Run Concurrently.* If the FEIS is filed within ninety (90) days after a DEIS is filed with the EPA, then the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to 40 CFR 1506.10(d), the FMCSA shall allow not less than 45 days for comments on draft statements.

d. *Request for Reasonable Extensions.* Requests for reasonable extensions of the review period for the draft EISs shall be granted whenever possible, and particularly when warranted by the magnitude and complexity of the statement or the extent of citizen interest.

e. *Reduction of Prescribed Periods.* Requests to reduce the prescribed periods for EIS processing based on compelling reasons of national security must be made via the Administrator to EPA.

f. *Emergency Circumstances.* In emergency situations (such as life-threatening natural or human-caused disasters), where it is necessary to take an action with significant environmental impact without observing the provisions of CEQ regulations, the process outlined above (NEPA normal circumstance procedures) cannot be followed. CEQ regulations (40 CFR 1506.11) permit Federal agencies to consult with CEQ to discuss alternative arrangements. The FMCSA NEPA Liaison will consult with CEQ to discuss alternative arrangements in such emergency situations. This is only applicable to actions necessary to control the immediate effects of the emergency; other actions remain subject to NEPA review (40 CFR 1506.11). The FMCSA NEPA Liaison will also notify Cooperating Agencies in this regard.

(1) Program staff should always alert the FEQAs and the NEPA Liaison immediately when an emergency exists.

(2) FMCSA will limit such actions necessary to control the environmental impacts of the emergency.

(3) In emergency situations where it is necessary to take an action that does not have significant environmental impact without observing the provisions of CEQ regulations, and the process in this Order cannot be followed, the FMCSA NEPA Liaison will also consult with DOT's Office of the Assistant Secretary for Transportation Policy (P–1) to discuss alternative arrangements in such emergency situations.

C. Planning and Early Coordination

1. Scoping

The environmental checklist, located in Appendix 1, is a tool to assist in scoping, *i.e.*, identifying environmental requirements and potential consequences to consider in project planning efforts. Some consultation with Federal, State, tribal, or local expert agencies may be necessary to complete the environmental analysis checklist. The responsible official (the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation) must maintain a written record of contacts made and responses received. For all FMCSA actions not categorically excluded (see Appendix 2), all known interested (including those that might not be in accord with the action on environmental grounds) or affected parties (Federal, State, tribal, and local) must be notified in writing and invited to participate in the NEPA process. Any other parties having regulatory involvement in the outcome of, or otherwise having expressed an interest in the action, will also be notified in writing. All other interested parties may be informally contacted. For actions requiring preparation of an Environmental Impact Statement (EIS), the scoping process must be followed as described in 40 CFR 1501.7. Policy regarding public notice and involvement is presented in Sections A. and D.3. of Chapter 3 of this Order. The NEPA Liaison will identify other environmental review and consultation requirements so that FMCSA and cooperating agencies may prepare other required analyses and studies concurrently with preparation of the EA or EIS (40 CFR 1502.25).

2. Environmental Planning Process

Consideration of the environmental consequences of a given action (scoping) should begin early in the project planning process. This is necessary not only for documentation purposes, but also because environmental factors and compliance with Federal law may alter the design, layout, or timing of a given action. The word ''action'' is a comprehensive term used throughout this Order to cover all undertakings that may have environmental impacts. *See* Section D.1. of this chapter for examples. Environmental analysis and documentation for proposed actions are to be completed before initiation of the action.

For major actions, the EIS tiering as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate (*e.g.*, actions involving regulations on hours-of-service of drivers and hazardous materials). The first tier EIS would focus on broad issues, such as, general location, mode choice, area-wide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

D. Environmental Documentation

1. Actions Affected

This FMCSA Order applies to all FMCSA actions including the decision to conduct research activities (research, development, test, and evaluation); promulgate regulations; award grants and permits; change operations; conduct major acquisitions; and decommission FMCSA facilities or equipment (such as noise pollution or radioactive monitoring equipment).

2. Categorical Exclusions (CEs)

a. *Introduction.* As defined by the Council on Environmental Quality (CEQ), a ''categorical exclusion'' or ''CE'' means a category of actions which do not individually or cumulatively have a significant effect on the human

environment and for which, therefore, neither an EA nor an EIS is required. The use of a CE is intended to reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs. All CEs are subject to ''extraordinary circumstances'' (40 CFR 1508.4).

b. *FMCSA List of CEs.* A list of current FMCSA CEs can be found in Appendix 2 of this Order. The CEs listed in Appendix 2 are subject to review and any suggested modifications should be provided to the Administrator. Additional CEs should be suggested by the responsible FMCSA official when it becomes clear that the category of actions does not individually or cumulatively result in significant effects. For example, when through the preparation of EAs, FONSIs result after numerous analyses of similar types of actions and monitoring confirms the FONSI are appropriate, a new CE should be proposed.

3. Limitations on Using Categorical Exclusions

a. Extraordinary circumstances that preclude the use of a categorical exclusion are when the proposed action:

(1) Has greater size or scope than is generally experienced for the category of action.

(2) Is reasonably likely to create controversy regarding the potential for significant environmental effects (direct, indirect, and cumulative).

(3) Has highly uncertain effects on the environment that involve unique or unknown risks, or are scientifically controversial.

(4) Is reasonably likely to establish a precedent (or makes decisions in principle) for future or subsequent actions that would have a future significant effect.

(5) Is reasonably likely to have significant effects on public health, safety, or the environment.

(6) Is reasonably likely to be inconsistent with or cause a violation of any Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(7) Is reasonably likely to cause reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(8) Is reasonably likely to cause releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(9) Is reasonably likely to generate air emissions that would exceed *de minimis* levels or otherwise require a formal Clean Air Act conformity determination.

(10) Has reasonable potential for degradation of already existing poor environmental conditions. Also, reasonable initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(11) Is reasonably likely to have an unresolved effect on environmentally sensitive resources unless the impact has been resolved through another environmental process (*e.g.*, CZMA, NHPA, CWA, etc). Environmentally sensitive resources include:

(A) Proposed federally listed, threatened, or endangered species or their habitats.

(B) Properties listed or eligible for listing on the National Register of Historic Places.

(C) A site that involves a unique characteristic of the geographic area, such as prime or unique agricultural land, a coastal zone, a historic or cultural resource, park land, wetland, wild and scenic river, designated wilderness or wilderness study area, 100-year floodplain, sole source aquifer (potential sources of drinking water), ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c). (Section 303(c) of Title 49 U.S.C. is commonly referred to as section 4(f) of the Department of Transportation (DOT) Act, which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or any historic site).

(12) Is considered together with other past, present and reasonably foreseeable future actions, and is likely to create cumulatively significant impacts.

(13) Has a reasonably disproportionate (high and adverse) effect on a minority or low income population, change in traffic patterns or an increase in traffic volumes (road and/or waterway) that could require rerouting of roads, waterways, or traffic.

b. The listed circumstances above and those in the DOT Order are addressed in the Environmental Checklist (Appendix 1). If a CE is *not* appropriate, an EA or an EIS must be prepared.

c. When the specific CE requires that a checklist be completed, an Environmental Checklist (Appendix 1) will be completed and used to substantiate the use of the CE. The checklist must be submitted with the proposal for the action. If a CE is not appropriate, the Environmental Checklist will be used for developing an EA or EIS. A written Categorical Exclusion Determination (CED) must be prepared when a CE will be relied on to promulgate a regulation that requires an environmental checklist. Checklists and CEDs supplementary to the requirements of this Order may be developed by subordinate commands for specific types of actions. Those documents must be approved by the Administrator before they are adopted for use.

d. Even though a CE is appropriate, that fact does not exempt the action from compliance with any other Federal law or any review or consultation requirements contained in any applicable agreement. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act (conformity requirements), etc., is always mandatory, even for actions that do not require an EA or EIS.

4. Environmental Assessment (EA)

An EA is a brief report that provides sufficient evidence and analysis to determine the significance of the potential environmental effects of the proposed action and its alternatives. The EA documents, in summary, set forth the agency's consideration of environmental effects in the planning stages of the action. The EA is the document used to determine whether to prepare an EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9).

a. An Environmental Assessment (EA) means a concise public document that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to provide:

(A) An Environmental Impact Statement; or

(B) A Finding of No Significant Impact.

(2) Aid an agency's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

b. All EAs shall include brief discussions of:

(1) The need for the proposal;

(2) The no action alternative and alternatives as required by section 102(2)(E) of NEPA;

(3) The environmental impacts of the proposed action and alternatives;

(4) The significance of effects:

(A) Context(s) in which effects may occur.

(B) Intensity of effects, using the Environmental checklist as an outline, and including mitigation measures

where they exist and are adequate to reduce effects below significance; and

(5) A listing of agencies and persons consulted.

The EA, supported by the necessary appendices, must be concise for meaningful review and use by the decisionmaker. Studies, technical data and other documents incorporated by reference should be readily available to the public.

c. Projects for which environmental assessments are normally completed include new or revised regulations, directives or policy guidance concerning activities that are not categorically excluded and it is uncertain whether they may have significant environmental effects.

5. Finding of No Significant Impact (FONSI)

A FONSI is a statement that a proposed action has been environmentally assessed (EA completed) and determined not to ''significantly affect the quality of the human environment.'' The FONSI must briefly present the reasons why the action will not have a significant impact on the quality of the human environment.

a. The FMCSA is only required to circulate an EA if there is a special reason to do so. The CEQ regulations require an agency to make an EA available for 30 days [*see* 40 CFR 1501.4(e)(2)] if there is a precedent-setting or unique action. Thus, the EA will be made available to the public for review and comment for thirty (30) days and notice will be provided in accordance with 40 CFR 1501.4(e)(2) and 1506.6. Normally, the FONSI may be attached to the EA and combined into a single document. However, if the EA is developed on a ''precedent-setting or unique action'' as referred to in section 1501.4(e)(2), a copy of the EA shall be made available to the public for a period of not less than 30 days before the FONSI is made and the action is implemented.

b. If the FMCSA is engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, it may make a finding of no significant impact available for public review (including State and areawide clearinghouses) for thirty (30) days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(1) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the FMCSA pursuant to 40 CFR 1507.3, or

(2) The nature of the proposed action is one without precedent. *See* 40 CFR 1501.4(e)(2).

c. *Format.* For FMCSA purposes a FONSI should be a separate, one page document to which an EA is attached and which notes any other environmental document related to it. The format should be as outlined in Appendix 7.

d. *Coordination.* To ensure copies of the FONSI and the EA are available to the public upon request, the originator must forward one copy each to the Administrator and the responsible Associate Administrator program office, and retain one copy each in the office of the preparer and the appropriate program office. For actions involving a notice to be published in the **Federal Register** or where a docket has been established in the DOT Docket Management System (DMS), the originator must forward one single-sided copy suitable for black and white scanning to the staff responsible for the **Federal Register** notice or FMCSA docket. The staff person responsible for the FMCSA docket will forward the FONSI and EA to the appropriate docket for public viewing on the World Wide Web (www).

6. Environmental Impact Statement (EIS)

a. An EIS is prepared for actions significantly affecting the quality of the human environment. It describes in detail the nature and extent of the environmental impacts of the proposed action and each alternative. The EIS should discuss appropriate mitigation measures for any adverse impacts associated with the proposed action or alternative. FMCSA actions which normally require an EIS include the following:

(1) Actions assessed in an environmental assessment where a finding of no significant effect is not made.

(2) Actions which generate significant controversy because of effects on the human environment.

(3) Actions for which there is a clear need for an Environmental Impact Statement, such that it is unnecessary to first prepare an Environmental Assessment. These would include actions having a significant effect on the following:

(A) Air quality.

(B) Noise.

(C) Hazardous materials.

(D) Endangered species.

(E) Significant archaeological, cultural or historical resources.

(F) Wetlands.

(G) Property protected under section 4(f) of the DOT Act.

b. Preparation and Processing of EISs.

(1) *Preparation of EISs.* All draft, final, and supplemental EISs (DEISs, FEISs, SEISs) must be prepared as directed in 40 CFR part 1502. A template for the cover page of an FMCSA EIS is included in Appendix 9.

(2) *Circulation of EISs.* FMCSA is adopting the availability of, and the review process for, draft EISs as set forth at 40 CFR 1506.10. The originator of the draft EIS or the responsible Associate Administrator program office must forward copies of the DEIS, FEIS, and SEIS, as applicable, to the Administrator for distribution among Administrator level offices and DOT elements, as appropriate, and for filing 5 copies with the Environmental Protection Agency's (EPA's) Office of Federal Activities. The copies of the environmental documents should be forwarded to the Administrator in sufficient time for review and comment by Administrator level offices and DOT elements as appropriate.

When the State process for intergovernmental review provides that comments are obtained through a designated agency, the DEIS must be circulated to that agency. When there is no designated agency for intergovernmental review, the FMCSA project manager must obtain comments directly from interested State and local agencies.

Additionally, comments must be solicited from the affected and interested public, Federal agencies that have jurisdiction by law or expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards, and any other Federal agency that is affected by the proposed action or has requested a copy of the DEIS. The FEIS and SEIS will be circulated to all those who commented on the DEIS or requested copies of the FEIS, and to any other interested or affected organizations, agencies or individuals.

(3) *Legal Review.* The Headquarters Office of the Chief Counsel must provide final legal sufficiency review of all FMCSA DEISs, FEISs, and SEISs prepared for all actions.

(4) *Environmental Review and Approval.* As noted above, the Administrator has authority to approve all FMCSA DEISs, FEISs, and SEISs in conjunction with the responsible official in the originating program office. With the exception of highly controversial

EISs (as defined by Section 11.d. of DOT Order 5610.1C), this approval authority is delegated to the Headquarters Division Offices and Field Operations Service Center Administrators for FMCSA DEISs, FEISs and SEISs for actions that originate within, and have effects confined to, their respective area.

(A) *Highly controversial EISs.* The Administrator and the appropriate FMCSA Associate Administrator program office must approve highly controversial EISs. Before final FMCSA approval of a controversial FEIS, however, the Administrator will notify Secretary or Transportation's Office of the Assistant Secretary for Transportation Policy (P–1) and Office of the General Counsel (C–1) that a controversial FEIS is under review and will provide them a copy of the summary section contained in the FEIS. The Administrator as appropriate, will give DOT [(P–1) and (C–1)] two weeks notice before final approval of a highly controversial FEIS.

(B) *Non-controversial EISs.* For all other FEISs, only a notice of approval will be made to DOT (P–1) by the responsible Associate Administrator program office via the Administrator.

(5) *Records of Decision (40 CFR 1505.2).*

(A) A concise public Record of Decision (ROD) must be completed for projects requiring an EIS (See Appendix 12). As required by 40 CFR 1505.2, the record must do the following:

(i) State what the decision was.

(ii) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency must identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program must be adopted and summarized where applicable for any mitigation.

(B) The ROD is the document that completes the EIS process and states whether and how to proceed with the proposed action. The Environmental Project Manager must forward 12 copies of the ROD (these can be submitted along with the copies of the FEIS) through the appropriate chain of command to the Administrator. The twelve copies of the ROD must be forwarded to the Administrator in sufficient time for review and comment by Administrator level offices and DOT elements as appropriate. After the ROD is reviewed and signed by the responsible FMCSA official (*see* section D.14. of this chapter), signed copies will be forwarded to the Administrator for distribution among Administrator level offices and DOT elements as appropriate and for publication in the **Federal Register**. The responsible FMCSA official must distribute the ROD to appropriate agencies, organizations, individuals, and FMCSA dockets.

7. Agency Responsibility for Documents Prepared by Applicants or Proponents (See 40 CFR 1506.5)

a. The CEQ regulations allow for applicants or proponents (*e.g.*, a cooperating local government) to prepare environmental documents for a proposed action, but require that the FMCSA take an active guidance and evaluative role during EA/EIS preparation, and take final responsibility for the quality of the analysis and the resulting document. If the FMCSA permits an applicant to prepare an EA or EIS, the FMCSA:

(1) Will assist the applicant by outlining the types of information required;

(2) Will independently evaluate the information submitted and shall be responsible for its accuracy; or

(3) Will make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental document (40 CFR 1506.5).

b. Local governments, other applicants, or cooperating agencies may conduct studies, etc., on FMCSA's behalf, but the FMCSA must oversee and approve the work. FMCSA staff will provide guidance to assist applicants in preparation of these documents.

8. Documents Prepared by Contractors

a. Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner that avoids, to the maximum extent possible, even the appearance of impropriety, including but not necessarily limited to, avoiding any conflicts of interest. Therefore, contractors must execute disclosure statements specifying that they have no financial or other interest in the outcome of the project or action. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/statement and also to avoid extensive, time-consuming, and costly analyses or revisions. FMCSA Action proponents and NEPA program managers must be continuously informed and involved. When selecting a contractor the following rules shall apply:

(1) A contractor shall be chosen solely by Federal agencies to avoid any conflict of interest.

(2) Agencies shall prepare disclosure statements for execution by contractors specifying that the contractor has no financial or other interest in the outcome of the action.

(3) The responsible Federal official shall independently evaluate the EIS and take responsibility for its scope and contents.

(4) All contractor-prepared documents must indicate the contractor's level of involvement in the following ways:

(A) If contractor involvement is minimal and only for a limited portion of the NEPA analysis process, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environmental Project Manager.

(B) If the contractor has major involvement in the preparation of the NEPA document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the ''cover page'' of the NEPA document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for the FMCSA and be signed by the contractor as preparer, or that the documentation was prepared by both the contractor and the FMCSA and be signed by the contractor and the FMCSA Environmental Project Manager as preparers.

b. *Types of Contracts and Agreements.* Most FMCSA NEPA-related work would normally be procured under Firm Fixed Price contracts (used when all elements of a task are well-defined), but this may not always be the most efficient kind of vehicle for the stated purpose. The type of contract used is a Contracting Officer's (CO) call. The FMCSA may also use other different contract types, such as:

(1) Indefinite Delivery (used when delivery requirements are not certain);

(2) Fixed Price with Economic Price Adjustment (used when market prices for labor and/or materials are likely to be unstable over the life of the contract);

(3) Fixed Price Award Fee (used when FMCSA wishes to provide an incentive award and evaluation standards exist);

(4) Fixed Price Prospective Redeterminable (used when the costs

can be estimated reliably only during the first year of performance);

(5) Fixed Price Incentive (used when a proposed cost-sharing formula would motivate a contractor to control costs);

(6) Cost Plus Fixed Fee (used when risks and requirements are highly uncertain);

(7) Cost Plus Incentive Fee (used when risks and requirements are highly uncertain);

(8) Cost Plus Award Fee (used when risks and requirements are highly uncertain);

(9) Cost or Cost Sharing (used when risks and requirements are highly uncertain); and

(10) Time and Materials (used when risks and requirements are highly uncertain).

c. *Interagency Agreements.*

(1) The FMCSA can use Interagency Agreements (IAAs) (or ''Economy Act'' Transfers, 31 U.S.C. 1535) to accomplish needed NEPA studies. For example, it may be possible to obtain data on the air quality standards for a particular region in the United States through agreement with the Environmental Protection Agency, or on endangered species through the U.S. Fish and Wildlife Service. Use of an IAA is a CO's call.

(2) IAAs can provide the FMCSA with the interdisciplinary team it needs to establish Statements of Work, the scope of NEPA analysis and obtain the expertise needed to carry it out, and to develop contracts for NEPA-related studies.

d. *Statements of Work (SOWs).*

(1) SOWs are used in formal contracting, and informal and formal agreements to guide the development of data and deliverables.

(2) The FMCSA shall develop a SOW specifically for each proposed action and the FMCSA and the consultant should have a specific understanding of the nature of an acceptable deliverable before finalizing any contract or agreement.

e. *Role of the Contracting Officer, Subject Matter Expert, and Project Manager.*

(1) The FMCSA's Contracting Officer is responsible for all phases of procurement, from initial distribution of the Request for Proposals or Quotations (RFP/RFQ) to approving the final payment for NEPA services.

(2) The subject matter expert (SME) is crucial to the success of the procurement, as this person must develop the SOW, the specific evaluation criteria, and review the deliverables along with the project manager at each stage of the NEPA process.

(3) The Project Manager, here used in the sense of the Contracting Officer's Representative, is the officially designated person who, with the appropriate SMEs, evaluates the various contract deliverables and recommends payments and other specific actions to the Contracting Officer.

9. List of Preparers

The EA and the EIS must contain a list of preparers who assisted in the preparation of the analysis. The list may also include members of other government entities, such as the Department of Justice, the Department of Labor, OSHA, etc., when they are responsible for a particular analysis used in the preparation of the document. The list should provide the name, affiliation or organization, and qualifications of the preparer and identify the section(s) of the document containing their analysis. *See* 40 CFR 1502.17 and 1506.5.

10. Reducing Paperwork in Preparation of Environmental Documents

Reduce excessive paperwork by:

a. Reducing the length of documents by means such as page limits.

b. Preparing analytic rather than encyclopedic documents.

c. Discussing only briefly issues other than significant ones.

d. Writing documents in plain language.

e. Following a clear format for documents.

f. Emphasizing the portions of the document that are useful and reducing emphasis on background material.

g. Using the scoping process to identify significant issues, deemphasize insignificant issues, and to narrow the scope of the environmental process.

h. Summarizing the document and circulating the summary if the document is unusually long.

i. Using program, policy, or plan environmental documents and tiering to eliminate repetition.

j. Incorporating by reference.

k. Integrating NEPA requirements with other environmental review and consultation requirements.

l. Requiring comments to be specific.

m. Attaching and circulating only changes to the draft documents rather than the entire document when changes are minor.

n. Eliminating duplication with State and local procedures, by providing for joint preparation, and with other Federal procedures, by providing for adoption of environmental documents.

o. Combining environmental documents with other documents.

p. Using categorical exclusions.

q. Using findings of no significant impact.

11. Reducing Delays in Preparation of Environmental Documents

Reduce delays by:

a. Integrating the NEPA process into early planning.

b. Emphasizing interagency cooperation before the environmental documents are prepared, rather than submission of adversary comments on completed documents.

c. Insuring the swift and fair resolution of lead agency disputes.

d. Using the scoping process for an early identification of what are and what are not the real issues.

e. Establishing appropriate time limits for the NEPA process.

f. Preparing environmental impact statements early in the process.

g. Integrating NEPA requirements with other environmental review and consultation requirements.

h. Eliminating duplication with State and local procedures by providing for joint preparation.

i. Combining environmental documents with other documents—and describing the circumstances when this will be done.

12. Supplementation

FMCSA NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

a. Supplemental NEPA documentation is required when:

(1) The FMCSA makes substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

b. This review requires a ''hard look'' to ascertain the adequacy of the previous analyses and documentation in light of the changes in project conditions listed above. If this review indicates no need for new or supplemental documentation, a statement to that effect should be prepared and attached to the documentation and included in the administrative record. Periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review.

c. In the event supplementation is required, the supplemental analysis and documentation should be prepared in accordance with 40 CFR 1502.9 and included in the administrative record for the proposed action.

13. Signing FMCSA NEPA Documents

Documentation resulting from FMCSA NEPA processes may require

the signature of the preparer/environmental project manager, environmental reviewer, and/or the responsible FMCSA official. FMCSA documents which require signatures consist of the following:

a. The Environmental Checklist (Appendix 1).

b. The Categorical Exclusion Determination (Appendix 4).

c. The cover page of an Environmental Assessment (Appendix 5).

d. The Finding of No Significant Impact document for FMCSA-prepared, adopted, contractor, or applicant-prepared NEPA documents (Appendix 7).

e. The cover page for an Environmental Impact Statement (EIS), (Appendix 9).

f. The Record of Decision (ROD) for an EIS (Appendix 12).

14. Signature

Where a signature is required on each of the signature pages listed in Section D.12. of Chapter 2, above, the following policy applies.

a. *Signature of the Responsible Official.* The responsible official is the person with the authority for either making the decision or developing the final recommendation for a decision on the actions analyzed in the NEPA document. The purposes of the responsible official's signature are to:

(1) Provide a means to monitor NEPA activity in the FMCSA; and

(2) Demonstrate that relevant environmental information was considered by the decision-maker when the decision was made.

Typically, for Administrator-initiated actions, the responsible official is the Office Director for the program sponsoring the action. For Administrator-initiated regulations, the responsible official is the person with the delegated authority to issue the regulation.

b. *Signature of the Environmental Reviewer.* The environmental reviewer is the individual responsible for reviewing the environmental content of the document to ensure that the environmental analysis and documentation complies with NEPA, CEQ regulations, DOT, and FMCSA NEPA policies and procedures.

For Administrator-initiated actions, including those where document preparation has been delegated to the Field, the environmental reviewer must be a member of the FMCSA environmental staff in the Administrator's office.

For Administrator-initiated actions where document preparation has been delegated to the Field, the Administrator may also delegate environmental review of the document to the Field. However, such delegation must be documented in formal correspondence between the Administrator and the applicable Field office.

For Field initiated actions, the environmental reviewer must be a member of the environmental staff in that organization. For actions initiated by Headquarters Units, Divisions, and Offices, the environmental reviewer must be a member of the FMCSA Headquarters environmental staff. In all cases, the environmental reviewer cannot be the same individual as the preparer of the NEPA document.

c. *Signature of the Environmental Project Manager.* For NEPA documents that are prepared with in-house staff, the FMCSA staff member coordinating the preparation of the environmental document is, and signs as, the ''Environmental Project Manager.'' The Environmental Project Manager is responsible for the quality of the environmental and technical analysis and documentation.

(1) If contractor involvement is minimal and only for part of the NEPA document, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environmental Project Manager.

(2) If the contractor has major involvement in the preparation of the NEPA document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the ''cover page'' of the NEPA document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for the FMCSA and be signed by the contractor as preparer, or that the documentation was prepared by both the contractor and the FMCSA and be signed by the contractor and the FMCSA Environmental Project Manager as preparers.

d. *Signature of applicant, contractors, or other preparers.* Applicants, contractors, and other preparers must sign-off on environmental documents at the time they submit the documents to the FMCSA.

E. Special Areas of Consideration

See Appendix 18 for additional information on evaluating special areas of consideration, such as air quality, potential noise impacts, hazardous materials, endangered species, the National Historic Preservation Act, wetlands, and determinations under section 4(f) of the DOT Act.

Chapter 3. Public Involvement, Legislative, and Interagency Coordination

A. Citizen Involvement and Public Notice Process

In addition to the information in this Chapter, see Appendix 15, which contains information on distribution of EISs and notices of NEPA related hearings, meetings, and documents.

1. Public Involvement (40 CFR 1506.6)

a. The FMCSA will make diligent efforts to involve the public in preparing and implementing its NEPA procedures. The FMCSA will provide public notice of NEPA-related hearings and hold or sponsor public hearings or meetings whenever appropriate in accordance with statutory requirements applicable to FMCSA. The FMCSA will make environmental documents available to inform those persons and agencies who may be interested or affected. The FMCSA will provide:

(1) *Notice in All Actions.* In all cases mail notice to those who have requested it on an individual action.

(2) *Notice in Actions of National Concern.* In the case of an action with effects of national concern, provide notice to include publication in the **Federal Register**.

(A) In addition, the FMCSA will post notices and press releases on the FMCSA internet website.

(B) FMCSA will provide notice by mail to:

(i) News organizations and members of the public.

(ii) Federal, State, Tribal, and local government agencies that have jurisdiction by law or special expertise with respect to an environmental impact involved or that are authorized to develop and enforce environmental standards, or those agencies, organizations, and individuals that have expressed a concern in the matter.

(iii) Those who have requested it on an individual action; and

(iv) National organizations reasonably expected to be interested in the matter. If engaged in rulemaking, the FMCSA will provide notice by mail to national organizations who have requested that notice regularly be provided. The FMCSA shall maintain a list of such organizations.

(3) *Notice in Actions of Local Concern.* In the case of an action with effects primarily of local concern, the FMCSA will:

(A) Notify State and area wide clearinghouse pursuant to Executive Order 12372 entitled, ''The President Intergovernmental Review of Federal

Programs.'' (see 47 FR 30959; July 16, 1982).

(B) Publish notice in local newspapers (in papers of general circulation rather than legal papers).

(C) Publish notice in newsletters or provide notice through other local media (*e.g.*, radio, television, etc.) that may be expected to reach potentially interested persons.

(D) Notify Indian tribes when effects may occur on reservations or impact tribal interests.

(E) Follow the affected State's public notice procedures for comparable actions.

(F) Notify potentially interested community organizations including small business associations.

(G) Send direct mailings to owners and occupants of nearby or affected property.

(H) Post notice on- and off-site in the area where the action is to be located.

b. When deciding whether to hold or sponsor a public hearing or meeting, consider whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the proposed action supported by reasons why a hearing will be helpful.

(3) If a draft EIS is to be considered at a public hearing, the FMCSA shall make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

c. The FMCSA shall solicit appropriate information from the public.

d. The FMCSA shall explain in its public notice where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

e. The FMCSA shall make EISs (in addition to the distribution described in 40 CFR 1502.19)., the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including CEQ.

2. Notice of Intent

As soon as the decision to prepare an EIS has been made, the responsible FMCSA official, via the Administrator, must approve and publish the required Notice of Intent (40 CFR 1508.22) in the **Federal Register**. Where there is a lengthy period between the decision to prepare an environmental impact statement and the time of actual preparation, the Notice of Intent may be published at a reasonable time in advance of preparation of the draft statement. In addition to publishing the Notice of Intent in the **Federal Register**, the FMCSA will provide notices and press releases on the FMCSA internet website.

3. Intergovernmental Review

Responsible FMCSA officials will provide notice to other Federal, State, local, and tribal government agencies when proposed actions are likely to involve public interest. The EA or EIS must evidence this solicitation, and consideration of the comments received.

B. Proposals for Legislation

1. Preparation

The originating Associate Administrator program office must ensure completion of the environmental analysis and/or documentation for legislative proposals or reports on proposed legislation for which the FMCSA is primarily responsible.

2. Processing

An EIS, if necessary, must be processed as required in paragraph 15.b. of DOT Order 5610.1C, via the Administrator (*See* 40 CFR 1506.8).

C. Mitigating Measures

The responsible FMCSA official must assure the execution and monitoring of all mitigating measures committed to in any environmental document (*i.e.*, EA, FONSI, EIS, SEIS, or FEIS) and/or record of decision for any FMCSA action. When implementing decisions, the FMCSA shall:

1. Include appropriate conditions in grants, permits, regulations or other approvals;

2. Condition funding or actions on mitigation;

3. Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted; and

4. Upon request, make available to the public the results of relevant monitoring.

D. Inter-Agency Coordination

1. Lead Agencies and Cooperating Agencies

The FMCSA will request the participation of each Cooperating Agency in the NEPA process at the earliest possible time. The FMCSA will coordinate and integrate State and Tribal processes early in the NEPA process. When FMCSA is a Lead Agency, it will use the environmental analysis and proposals of Cooperating Agencies with jurisdiction by law or special expertise, to the maximum extent possible.

a. *Lead Agency Designation.* For Field office actions, the program office in the Field will assume responsibility for maintaining FMCSA lead agency status. The Chief of the responsible Administrator-level program office will assume this responsibility for Administrator-originated actions. The Administrator will designate the responsible Field Administrator for maintaining FMCSA lead agency status in extraordinary circumstances (*e.g.*, when an action transcends or involves more than one Field office, etc.).

b. *Proactively Soliciting Cooperating Agencies.* FMCSA will actively consider designation of Federal and non-Federal cooperating agencies in the preparation of its analyses and documentation required by NEPA, and will ensure that FMCSA actively participates as a cooperating agency in other agencies' NEPA processes. Stakeholder involvement is important to ensure decisionmakers have the environmental information necessary to make informed and timely decisions efficiently. One of the benefits of Cooperating Agency participation in NEPA analyses includes enhancing agencies' ability to adopt environmental documents by allowing adoption of an EIS without recirculating it as a draft EIS.

(1) *Cooperating Agency Designation.* FMCSA shall determine if Federal and non-Federal agencies are interested and appear capable of assuming the responsibilities of becoming a cooperating agency under 40 CFR 1501.6. If invited, Federal, State, Tribal and local agencies that elect *not* to be included as cooperating agencies, should still be considered for inclusion in interdisciplinary teams engaged in the NEPA process and on distribution lists for review and comment on the NEPA documents.

(A) If the FMCSA determines that cooperating agencies will be useful in the development and preparation of EAs and EISs, it will notify, in writing, those Federal and non-Federal agencies that may be interested of assuming the

responsibilities of becoming a cooperating agency. The FMCSA may consider the following factors, as appropriate on a case-by case basis, for determining whether to invite, decline, or end cooperating agency status:

(i) Whether the agency has jurisdiction by law (40 CFR 1508.15) (*e.g.*, Does the agency have authority to approve, veto, or finance a proposal or portions of a proposal?);

(ii) Does the cooperating agency have the special expertise (40 CFR 1508.26) needed to help the lead agency to:

(a) Meet a statutory responsibility;

(b) Carry out an agency mission;

(c) Meet related program expertise or experience; or

(d) Meet the objectives of regional, State, and local land use plans, policies and controls (40 CFR 1502.16(c))?

(iii) Does the agency understand what cooperating agency status means and can it legally enter into an agreement to be a cooperating agency?

(iv) Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?

(v) Can the cooperating agency, in a timely manner, aid in:

(a) Identifying significant environmental issues, including aspects of the human environment (40 CFR 1508.14) and natural, social, economic, energy, urban quality, historic and cultural issues (40 CFR 1502.16)?

(b) Eliminating minor issues from further study?

(c) Identifying issues previously the subject of environmental review or study?

(d) Identifying the proposed action's relationship to the objectives of regional, State and local land use plans, policies and controls (40 CFR 1502.16(c))?

(vi) Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?

(vii) Can the cooperating agency provide resources to support scheduling and critical milestones, such as:

(a) Personnel? Consider all forms of assistance (*e.g.*, data gathering, surveying; compilation; research).

(b) Expertise? This includes technical or subject matter expertise.

(c) Funding? Examples include funding for personnel, travel and studies.

(d) Models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.

(e) Facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

(viii) Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues, and analyses?

(ix) Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

(x) Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

(xi) Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating agency status. Agencies must be alert to situations where State law requires release of information.

(xii) Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

(B) Agencies responsible for NEPA analysis are urged to:

(i) Set time limits;

(ii) Assign milestones;

(iii) Assign responsibilities for analysis and documentation;

(iv) Specify scope and detail of the cooperating agency's contribution;

(v) Establish other appropriate ground-rules addressing issues such as availability of pre-decisional information; and

(vi) In appropriate cases, document their expectations, roles, and responsibilities (*e.g.*, Memorandum of Agreement or Understanding, or correspondence).

(2) *Agencies That Decline Cooperating Agency Status.* Federal agencies that decline to accept cooperating agency status in whole or in part are obligated to respond to the request. A copy of their response should be provided to CEQ (40 CFR 1501.6(c)). If an agency refuses to participate, FMCSA shall provide the agency refusing to participate with a draft EIS for comment. Negative and/or controversial comments may be referred to CEQ for resolution via the Administrator.

(3) *Declining an agency's request to participate.*

(A) If the FMCSA disagrees with the request by an agency to participate in the development of an EA or EIS, the Associate Administrator for Policy and Program Development (MC–PR) will contact the requesting agency's responsible official to have a meeting to discuss the matter and attempt to resolve the issues the FMCSA has against participating.

(B) If no agreement can be reached between the requesting agency and FMCSA:

(i) The Associate Administrator for Policy and Program Development will prepare a letter for the FMCSA Administrator's signature declining to participate with the requesting agency.

(ii) The letter will provide the specific reasons why the FMCSA believes it should not or cannot participate with the cooperating agency's request.

(iii) The FMCSA will coordinate its letter of declination with OST's Office of the Assistant Secretary for Transportation Policy (P–1) before the FMCSA Administrator signs and transmits this letter of declination to the cooperating agency and CEQ.

c. *CEQ Resolution.* Request for Council on Environmental Quality (CEQ) resolution concerning lead agency designation must be made via the Administrator. The Administrator will contact CEQ for resolution of environmental issues.

d. *Adverse Comments and Delays.* Matters to be discussed with the Council on Environmental Quality (CEQ) must be coordinated with the Administrator.

2. Distribution of Environmental Documents

a. FMCSA will provide a written notification to State, area-wide, regional, local, and tribal officials through the State process or otherwise, of any plan or project proposed in the State or locality. Where the effect of an action or rulemaking, etc., crosses State/tribal lines, the FMCSA will notify each entity of the proposal. Notification must take place at the earliest practicable time in project planning. The notification must contain all of the following:

(1) Name of the organization proposing the project.

(2) Geographic location of the project.

(3) Brief description of the project that will ensure appropriate distribution.

(4) Program to be supported by the project.

(5) Date on which the actual development, construction, or other

activities involved in the physical implementation of the project is scheduled to begin.

b. In areas where no State clearinghouse process exists, forward the notification letter directly to affected State, area, regional, local, and tribal entities with instructions to review and coordinate the project.

c. It is recommended that interagency distribution of Environmental Assessments or Environmental Impact Statements be handled using a ''Public Notice'' type cover letter addressed to ''All Interested Parties.'' It should announce the availability of the EA, EIS, or SEIS, describe the project, review environmental considerations, and solicit comments. This practice eliminates the need for individual distribution letters.

3. Adopting Environmental Documents Prepared by Other Agencies

a. *Summary.*

(1) Some FMCSA actions can be taken based on environmental documentation that has been prepared by another Federal agency. The CEQ Regulations (40 CFR 1506.3) encourage agencies to adopt the environmental documentation of other Federal agencies whenever possible to reduce costs and processing time of Federal actions. This adoption may be complicated due to difference in internal agency judgment.

(2) In order to adopt another agency's environmental documentation the FMCSA must be in agreement with the content and findings of the document.

b. *Specific Procedures.* The following procedures must be adhered to when adopting environmental documents produced by other agencies:

(1) *Environmental Assessments (EAs).* EAs produced by another agency may be adopted. The responsible FMCSA official must ensure that the EA prepared for, or by, the other agency is adequate for FMCSA's purposes. If the EA is in fact adequate from a NEPA standpoint and meets FMCSA requirements, the FMCSA may adopt the document. In doing so, the FMCSA accepts the EA and takes full responsibility for its scope and content.

Should review of the EA by the responsible FMCSA official conclude in a Finding of No Significant Impact (FONSI), a FONSI statement must be prepared and should follow the format provided in Appendix 7. The FONSI should be attached to the front of the EA. The use of Appendix 7 serves both as a statement adopting the lead agency's EA and as a Finding of No Significant Impact for the FMCSA. A separate adoption statement is not needed.

When the responsible FMCSA official determines that the lead agency's EA is *not* adequate, the EA must be supplemented or rewritten. This may be done by the lead agency at the request of the FMCSA. Should the lead agency be unable to do so, or refuse, the responsible FMCSA official must ensure that the EA is supplemented or rewritten, as appropriate. In this instance, the FMCSA does not adopt the lead agency's document. The lead agency's EA becomes the basis for the FMCSA's EA, and is incorporated in the FMCSA EA to the extent it is adequate.

(2) *Finding of No Significant Impact (FONSI).* A FONSI statement itself may not be adopted. However, an EA resulting in a FONSI may be adopted as discussed in Section D.4.b.(1) of Chapter 3.

(3) *Environmental Impact Statement (EIS).* The FMCSA may adopt the EIS of another agency if the EIS adequately addresses the impacts of the project within the FMCSA's area of jurisdiction and concern. The FMCSA may either adopt the entire EIS or just a portion of it, in accordance with the procedures described in 40 CFR 1506.3. When adopting the EIS of another agency, the responsible FMCSA official must state that the FMCSA has adopted another agency's EIS in the Record of Decision. A suggested format for the statement is as follows:

''After an independent review of (specify lead agency) Environmental Impact Statement, I have determined that the document adequately addresses the impacts of the (specify action(s)). Therefore, I hereby adopt the (specify entire EIS or portion thereof).''

4. Review of Environmental Statements Prepared by Other Agencies

Comments on Non-FMCSA EISs. In many instances, other Federal agencies will submit copies of their EIS to the FMCSA for review. One copy of all FMCSA comments must be sent to the Administrator and DOT (P–1).

5. Pre-Decision Referrals to the Council on Environmental Quality

DOT Lead Agency Proposals. Field Offices and Administrator-level program offices receiving a notice of intended referral from another agency must provide DOT (P–1) with a copy of the notice via the Administrator.

Appendix 2—FMCSA Categorical Exclusions (CE)

The following are actions that, unless consideration of the factors in Section D.3.a. of Chapter 2 triggers the need to conduct further analysis, are categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement. These categories of activities have been found by FMCSA to not have the potential to significantly affect the quality of the human environment, except when ''extraordinary circumstances'' are involved. (**Note:** Where there is the potential for extraordinary circumstances, an environmental checklist must be completed to determine whether the circumstances warrant further analysis in an EA or EIS. Ordinarily, documentation of a decision regarding the applicability of a categorical exclusion and the basis for that decision should be limited to the space of one page. If more detailed justification is considered necessary, the decisionmaker should consider whether an environmental assessment is a more appropriate level of documentation.)

1. Administration

a. Preparation of guidance documents that implement decisions authorized by the applicable FMCSA's Office of Business Operations Directive or other Federal agency regulations, procedures, manuals, internal Orders, and other guidance documents not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

b. Routine intra-agency personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have environmental impacts, such as, hiring, recruiting, processing and paying of personnel, and recordkeeping.

c. Routine procurement and contract activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance in accordance with Executive Orders 13101, 13148, and other applicable Executive Orders and Departmental policies regarding ''greening the government.''

d. Decisions to set up or decommission equipment or temporarily discontinue use of facilities or equipment, such as:

(1) Noise pollution monitors used in enforcement of the Noise Control Act of 1972.

(2) Radioactive material detectors used in enforcement of the Hazardous Material Transportation Acts.

(3) FMCSA-owned commercial motor vehicles used in the:

(A) Office of Enforcement and Program Delivery;

(B) Office of Research and Technology; or

(C) Commercial Vehicle platform of the Intelligent Vehicle Initiative.

This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

e. Routine and permitted movement of agency personnel and equipment, and the routine movement, handling, and distribution of non-hazardous and hazardous materials and wastes incidental to the routine and permitted movement of personnel and equipment in accordance with applicable regulations. Examples would include moving personnel from the Boise, Idaho, Division Office to the Pierre, South Dakota, Division Office or moving the agency's Intelligent

Transportation System/Commercial Vehicle Operation Technology Truck working display from McLean, Virginia, to an awareness training venue in Oak Ridge, Tennessee.

f. Personnel and other administrative actions associated with consolidations, reorganizations, or reductions in force resulting from identified inefficiencies, reduced personnel or funding levels, skill imbalances, or other similar causes.

g. Financial assistance or procurements for motor carrier activities that do not commit the FMCSA or its applicants to a particular course of action affecting the environment.

h. Hearings, meetings, or public affairs activities held at locations developed for such activities.

2. Purchase, Lease, and Acquisitions

Lease of space in buildings or towers for a firm-term of one year or less when the intended use is in conformity with current uses.

3. Operations

Realignment of mobile assets, including motor vehicles, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new terminals or for repair and overhaul.

Note. If the realignment would result in more than a one for one replacement of assets at an existing facility, then the checklist required for this CE must specifically address whether such an increase in assets could trigger the potential for significant impacts to protected species or habitats before use of the CE can be approved.

4. Data Gathering, Review of Environmental Tests, Studies, Analyses and Reports, and Research Activities

a. Data gathering, information gathering, and studies that involve no detectable physical change to the environment.

b. Research activities that are in accordance with inter-agency agreements and which are designed to improve or upgrade the FMCSA's ability to manage its resources. Examples of these resources would include FMCSA's stored data, its assets, and its properties, including its Intelligent Transportation System/Commercial Vehicle Operation Technology Trucks and its Safety Trucks.

c. Environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

d. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on FMCSA-contracted property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

e. Planning and technical studies that do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

f. Establishment of Global Positioning System (GPS), intelligent transportation systems (ITS), or essentially similar systems that use overlay of existing procedures.

g. Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment.

5. Training

a. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

b. Training of an administrative or classroom nature. Examples would include training to inspect a commercial motor vehicle brake system or to learn more about NEPA and how to prepare and develop environmental analyses for Environmental Assessments (EAs) and Environmental Impact Statements (EISs).

6. Establishing the Following Types of Regulations

a. Regulations addressing Civil Rights procedures and guidance.

b. Regulations which are editorial or procedural, such as, those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations.

c. Regulations concerning internal agency functions or organization or personnel administration, such as, funding or delegating authority.

d. Regulations concerning the training, qualifying, licensing, certifying, and managing of personnel.

e. Regulations to handle the processing of applications for operating authority and certificates of registration.

f. Regulations implementing the Motor Carrier Safety Assistance Program (MCSAP), that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs) for the following activities:

(1) Driver/vehicle inspections;

(2) Traffic enforcement;

(3) Safety audits; [1]

(4) Compliance reviews; [2]

(5) Public education and awareness; and

(6) Data collection; and provide reimbursement for:

(A) Personnel expenses;

(B) Equipment and travel expenses;

(C) Indirect expenses for:

(i) Facilities (not including fixed scales, real property, land or buildings) used to conduct inspections or house enforcement personnel. Examples of facilities would include a motor vehicle trailer for inspection personnel to take cover while doing paperwork during a roadside inspection;

(ii) Support staff;

(iii) Equipment to the extent they are measurable and recurring (*e.g.*, rent and overhead and maintenance and minor improvements);

(iv) Expenses related to data acquisition, storage, and analysis; and

(v) Clerical and administrative expenses.

g. Regulations implementing procedures to:

(1) Promote adoption and enforcement of State laws and regulations pertaining to CMV safety that are compatible with the FMCSRs;

(2) Provide guidelines for a continuous regulatory review of State laws and regulations; and

(3) Establish deadlines for States to achieve compatibility with appropriate parts of the FMCSRs with respect to interstate commerce.

h. Regulations implementing procedures to collect fees that will be charged for motor carrier registration and insurance for the following activities:

(1) Application filings;

(2) Records searches; and

(3) Reviewing, copying, certifying and related services.

i. Regulations implementing procedures for which motor carriers and brokers designate their agents (persons) for whom court process may be served, describing activities, such as:

(1) The forms upon which the carrier can make the designations;

(2) The eligible persons that can be agents, and how carriers shall make the designations in each State in which it is authorized to operate and for each State traversed during such operations, and

(3) Where such designations must be made.

j. Regulations implementing uniform Single-State registration procedures for motor carriers registered with the Secretary of Transportation.

k. Regulations for all brokers [3] of transportation by motor vehicles that describe the following activities:

(1) The duties and obligations of a broker;

(2) The records and accounts a broker must keep;

(3) The type of brokerage service the broker must perform; and

(4) The charges and compensation a broker is entitled to receive.

l. Regulations requiring every motor carrier to issue and keep a receipt or bill of lading (or record) for property tendered for

[1] A ''safety audit'' is an examination of motor carrier operations to provide educational and technical assistance on safety and the operational requirements of 49 CFR parts 100 through 178 and parts 350 through 399) and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls.

[2] A ''compliance review'' is an on-site examination of motor carrier operations (normally at the carrier's facility), such as driver's hours-of-service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accident involvement, hazardous materials, and other safety and transportation records to determine whether a motor carrier has systems, policies, programs, practices or procedures to ensure compliance with the applicable Federal safety regulations.

[3] A ''broker'' is a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. The broker has accepted the shipments and is legally bound to transport them.

transportation in interstate or foreign commerce containing such information as:

(1) What must be contained on the receipt; and

(2) Who shall be given the original freight bill and who shall be given a copy, as well as how it can be transmitted to the payer.

m. Regulations implementing procedures applicable to the operations of household good carriers engaged in the transportation of household goods,[4] for the following activities:

(1) The information that carriers must give to prospective shippers prior to holding themselves out to perform such service;

(2) How carriers are to estimate the shipping costs which the shippers will be required to pay for these shipments;

(3) How to determine the weight of the shipments prior to assessing any shipping charges;

(4) How to accept shipments and provides carrier notification of delay;

(5) The liability of carriers; and

(6) How to file complaints.

n. Regulations that apply to actions by motor carriers registered with the Secretary to transport property for the following:

(1) The leasing of equipment (*e.g.*, a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for-hire) with which to perform transportation regulated by the Secretary;

(2) The leasing of equipment to motor private carriers or shippers;

(3) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Secretary;

(4) To provide written lease requirements for authorized carriers that do not own their transportation equipment; and

(5) To set forth requirements for carriers to obtain exemptions for lease arrangements.

o. Regulations that apply to the transportation by motor vehicle of C.O.D. shipments by all common carriers of property subject to 49 U.S.C. 13702, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and for such transportation that is performed by freight forwarders and on freight forwarder bills of lading for the following activities:

(1) Tariff filing requirements;

(2) Extension of credit to shippers;

(3) Presentation of freight bills; and

(4) Computing time for shipments.

p. Regulations that govern the processing of claims for overcharge, duplicate payment, or over-collection for the transportation of property in interstate commerce or foreign commerce by motor carriers for information concerning how to document and investigate claims, keep records, and dispose of claims.

q. Regulations implementing preservation of records procedures for motor carriers and brokers, and household freight forwarders for the types of records that must be retained and the retention periods (*e.g.*, until expiration or termination plus 3 years, 3 years, etc.).

r. Regulations implementing controlled substances and alcohol use and testing procedures designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles and apply to every person and all employers of such persons who:

(1) Operate a commercial motor vehicle (as defined in 49 CFR 382.107) in commerce in any State; and

(2) Are required by 49 CFR part 383 to possess a commercial driver's license (CDL).

(3) Examples of the topics covered include rules prescribing activities for:

(A) Pre-employment controlled substances test requirements;

(B) Random, post accident, reasonable suspicion, return to duty and follow-up alcohol and controlled substances testing procedures for employers and employees;

(C) Random testing rates,

(D) Requirements for drivers to report immediately to a specimen collection site; and

(E) An action required by employers if an employee has a positive test result, and recordkeeping.

s. Regulations intended to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner and provide for:

(1) A prohibition against a commercial motor vehicle driver having more than one commercial motor vehicle driver's license;

(2) A requirement for drivers to notify their current employer and State of domicile of certain convictions;

(3) A requirement for drivers to provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) A prohibition against an employer allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges; testing and licensing requirements for commercial motor vehicle operators;

(6) A requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard; and

(7) Requirements for the State-issued commercial license documentation.

t. Regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by:

(1) Including the minimum standards for the actions States must take to be in substantial compliance with each of the statutory requirements of 49 U.S.C. 31311(a); and

(2) Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license.

And, establish procedures for:

(1) Determining whether a State is in compliance with the rules of this part; and

(2) The consequences of State noncompliance.

u. Regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

(1) A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

(2) To issue an appropriate Order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

v. Regulations prescribing the minimum levels of financial responsibility required to be maintained by motor carriers of property and passengers operating motor vehicles in interstate, foreign, or intrastate commerce.

w. Regulations to enable States to enter into cooperative agreements with the FMCSA to enforce the safety laws and regulations of a State and the agency concerning motor carrier transportation by filing a written acceptance of the terms.

x. Regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for waivers, exemptions and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.).

y. Regulations implementing general applicability, definitions, general requirements, and information as they pertain to motor carriers and commercial motor vehicle drivers.

z. Regulations establishing:

(1) The minimum qualifications for persons who drive CMVs as, for, or on behalf of motor carriers; and

(2) The minimum duties of motor carriers with respect to the qualifications of their drivers.

aa. Regulations requiring a motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with, or in control of a CMV to comply with when they inspect, repair, and provide maintenance for that vehicle.

bb. Regulations concerning vehicle operation safety standards (*e.g.*, regulations requiring: certain motor carriers to use approved equipment which is required to be

[4] ''Household goods'' means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the FMCSA may provide by regulation.

installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (*e.g.* fire extinguishers and flares).

cc. Special local regulations issued in conjunction with a motor vehicle rodeo or motor vehicle parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

dd. Regulations concerning rules of the road, traffic services, and marking of intelligent transportation systems.

7. Recreational Activities and Events

a. Approval of recreational activities or events (such as an FMCSA picnic) at a location developed or created for that type of activity.

b. Approvals of motor vehicle rodeo and motor vehicle parade event permits for the following events:

(1) Events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(2) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the FMCSA determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended [42 U.S.C. 4321, *et. seq.*]; the Council on Environmental Quality Regulations at 40 CFR Parts 1500–1508; DOT Order 5610.1C, as amended on July 13, 1982 and July 30, 1985; and 49 CFR 1.73.

Issued on: September 22, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–24426 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railway Company

[Docket Number FRA–2003–15432]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from certain sections of 49 CFR Parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train authority violations, overspeed violations and accidents caused by passing restricted signals and open switches. The program will enable BNSF to demonstrate and validate Wabtec Railway Electronics technology, referred to as Electronic Train Management System (ETMS), before it is implemented on a larger scale.

ETMS is a non-vital safety overlay that works in conjunction with existing methods of operation and signal and control systems to protect against the consequences of human error. This approach provides a ''safety net'' for train operations while retaining the existing systems as a primary means of control. Because these systems continue in operation, a failure or deactivation of the ETMS has the effect only of suspending the safety enhancements associated with the ETMS, without compromising the underlying safety provisions of existing systems and operating rules.

The ETMS safety enhancements are achieved through a communication-based system that enforces movement authority and speed restrictions for ETMS equipped trains. Four segments work together to provide the enforcement: The location segment, the locomotive segment, the dispatcher system segment and the communications segment. The dispatcher segment delivers the enforceable authority and temporary speed limits for each train under ETMS control. This information is delivered through the communications segment to the locomotive segment. Procedures are implemented to ensure the data received is complete and correct. Failsafe design dictates that an undelivered message will stop the train at the end of its active authority. The locomotive segment confirms the locomotive's location and enforces a train's movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation.

The ETMS will be tested and demonstrated on the BNSF's Wichita Falls subdivision in the State of Texas between Fort Worth, milepost 0 and Valley Junction, milepost 118.4. In addition the system will be tested and demonstrated on the Brookfield subdivision in the State of Illinois between Galesburg, milepost 168 and West Bushnell, milepost 192.4. Finally, the system will be tested and demonstrated on the Beardstown subdivision in the State of Illinois and the Commonwealth of Kentucky between Bushnell, Illinois, milepost 159.6 and Paducah, Kentucky, milepost 239.0. The combined distance of the test territory is 439.3 miles. The present method of operation on the BNSF is by Track Warrant Control and Centralized Traffic Control. These methods of operation will not be affected during the ETMS test period.

ETMS testing may require temporary changes of a benign nature in operating practices, but only on ETMS equipped trains and only when a test is in progress. Such changes in operating practices will include ETMS initialization procedures, digital transmission and on-board display of text authorities and restrictions, on-board display of signal aspect, on-board display of monitored switches, enforcement limits of authority and speed limits/restrictions through automatic brake applications, and procedures for recovery following an enforcement action.

The waiver is requested for a testing period commencing August 1, 2003, and extending to the conclusion of the test phase. The testing period is not expected to exceed one year and will terminate August 1, 2004, unless BNSF notifies FRA of an earlier termination date.

The following are the current waiver requests and their justifications.

Section 216.13

Special notice for repairs—locomotive. Waiver is requested for ETMS locomotives to the extent that

non-operation of ETMS equipment installed on board, whether through malfunction or deactivation shall not be construed as an unsafe condition requiring special notice for repairs; waiver is sought for non-equipped-ETMS-equipped locomotives operating in the ETMS pilot territory to the extent that the absence of ETMS equipment on-board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without ETMS equipment operating on board the controlling locomotive, a train remains subject to existing signal and control systems and to railroad operating rules. (ETMS is an overlaid system, enhancing current safety without affecting the operation of existing systems.) ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The ETMS tests will involve only a small subset of locomotives operating in the pilot territory.

Section 217.9

Program of operational tests and inspections; recordkeeping. Waiver is requested exempting operation of ETMS equipment and procedures from the requirements for operational tests, inspections, and associated recordkeeping.

Justification: The ETMS pilot is a test program during which procedures for using ETMS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules, timetables, and timetable special instructions to which this section applies.

Section 217.11

Program of instruction on operating rules; recordkeeping; and electronic recordkeeping. Waiver is requested exempting operation of ETMS equipment and procedures from the requirements for instruction and associated record keeping.

Justification: The ETMS pilot is a test program during which procedures for using ETMS equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the code of operating rules.

Part 218

[Subpart D] Prohibition Against Tampering With Safety Devices. Waiver is requested exempting on-board ETMS equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that ETMS equipment on board a locomotive shall not be considered a ''safety device'' subject to the provisions of this subpart at any time during the pilot program.

Justification: The ETMS pilot is a test program. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to permanently disable or remove ETMS equipment in the event that a production system is not implemented.

Section 229.135

Event recorders. Waiver is requested to the extent that ETMS equipment on-board a locomotive shall not be considered an ''event recorder'' subject to the provisions of this section.

Justification: ETMS equipment by design will operate intermittently during the pilot program. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to temporarily or permanently disable on-board ETMS equipment.

Section 233.9

Reports. Waiver is requested exempting ETMS operations in the pilot program from the reporting requirements of this section.

Justification: While an ETMS production system may belong to the category of ''other similar appliances, methods, and systems'' specified in 233.1, this requirement would impose an unnecessary paperwork burden for a test program.

Section 235.5

Changes requiring filing of application. Waiver is requested exempting the ETMS pilot program from the filing requirements of this section.

Justification: The ETMS pilot is a test program. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. BNSF requires the flexibility to permanently disable or remove on-board ETMS equipment in the event the ETMS system is not implemented.

Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that ETMS equipment shall be excluded from this requirement during the pilot program.

Justification: The ETMS pilot is a test program through which the normal functioning of ETMS will be defined and redefined. ETMS tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. With or without ETMS; equipment on-board the controlling locomotive, the train remains subject to the provisions of the existing signal and control systems and to the BNSF operating rules.

Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting ETMS equipment from the closed circuit design requirement.

Justification: ETMS is composed of solid-state components that are software driven. Neither the hardware nor software can technically be designed to meet the provisions of this section.

Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting ETMS components on-board a locomotive from the requirements of this section.

Justification: ETMS tests require flexibility in installing, removing, modifying, turning on and turning off equipment. Failure of a component during the test phase will not jeopardize the safety of train operations. With or without ETMS equipment operating on-board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing method of operation.

Section 236.15

Timetable instructions. Waiver is requested exempting the ETMS pilot territory from the timetable designation requirement of this section.

Justification: Since the pilot program will consist of tests and demonstrations, identifying the test territory in the timetable as ''ETMS'' (or some similar label) would be both premature and an unnecessary paperwork burden.

Section 236.23

Aspects and indications. Waiver is requested to the extent that the ETMS display on-board an equipped locomotive shall not be construed to represent or correspond to signal aspects or indications subject to the requirements of this section.

Justification: The ETMS design excludes any visual display of signal aspects or indications. ETMS enforceable authorities which may or may not derive from signal indications are on-board. Text authorities such as name of signal or track bulletins are displayed to the train crew. Information on the ETMS display will correspond with authority conveyed through wayside signals.

Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus.

Waiver is requested exempting ETMS equipment from the wire-tagging requirement.

Justification: ETMS hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting ETMS equipment from the requirement for removal of failed equipment from service.

Justification: ETMS requires flexibility in installing, removing, turning on, and turning off the equipment. With or without ETMS equipment operating on-board, a train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.107

Ground tests. Waiver is requested exempting ETMS equipment from the requirement for ground testing during the test phase.

Justification: ETMS hardware consists of computers, computer peripherals, and communication devices. Ground tests would serve no purpose in ensuring safety and could be damaging to the equipment.

Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting ETMS equipment from the testing requirement of this section during the test phase.

Justification: The timing devices in ETMS equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

Section 236.110

Results of tests. Waiver is requested exempting ETMS tests from the record keeping requirements of this section.

Justification: The ETMS pilot is a test program during which the types of tests needed to ensure appropriate levels of maintenance will be defined.

Section 236.501

Forestalling device and speed control. Waiver is requested exempting ETMS from the requirement for medium-speed restriction.

Justification: ETMS will not be connected to a signal system, but will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab. ETMS will enforce speed restrictions reflected in the track database or issued through the dispatcher system.

Section 236.504

Operation interconnected with automatic block-signal system. Waiver is requested exempting ETMS from the requirement of interconnection with an automatic block-signal system.

Justification: The ETMS system will have no connection to the signal system; however, ETMS will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab.

Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in advance. Waiver is requested exempting the ETMS on-board display from the cab-signal requirements in this section.

Justification: ETMS is not an automatic cab signal system and will have no connection to a signal system but will receive input from the signal system and display the signal name that forms the basis for limits of authority that will be depicted on the display.

Section 236.514

Interconnection of cab signal system with roadway signal system. Waiver is requested exempting ETMS from the requirement of interconnection with a roadway signal system.

Justification: The ETMS system is not a cab signal system and will have no connection with the signal system. However, ETMS will receive input from the signal system and display the signal name that forms the basis for limits of authority.

Section 236.515

Visibility of cab signals. Waiver is requested exempting the ETMS display from the visibility requirement of this section during the test phase.

Justification: ETMS is not a cab signal system. However, ETMS receives input from the signal system and displays the signal name governing the movement. The visibility requirements of this rule will be met in the ETMS production system.

Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting ETMS from the requirements of this section during the test phase.

Justification: ETMS tests require flexibility in installing, removing, turning on, and turning off ETMS equipment.

Section 236.552

Insulation resistance; requirement. Waiver is requested exempting ETMS equipment from the insulation resistance requirement of this section.

Justification: ETMS equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

Section 236.553

Seal, where required. Waiver is requested exempting ETMS from the seal requirement of this section.

Justification: ETMS tests require flexibility in installing, removing, turning on, and turning off ETMS equipment.

Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipment requirements in this section shall not apply to ETMS during the test phase.

Justification: A small subset of locomotives operating in the test territory will be ETMS equipped; the majority of trains will not be equipped. ETMS tests require flexibility in installing, removing, turning on and turning off the on-board equipment. In any case, all ETMS tests will be conducted under the provisions of the rules governing the existing methods of operation.

Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting ETMS tests from the restrictions associated with device failure or cutout. Tests require flexibility in installing, removing, turning on and turning off the on-board equipment.

Justification: ETMS tests require flexibility in installing, removing, turning on and turning off the onboard equipment. All ETMS tests will be conducted under the provisions of the rules governing the existing methods of operation. A failure or deactivation of ETMS equipment will not jeopardize safety of train operations.

Section 236.586

Daily or after trip test. Waiver is requested exempting the ETMS from the requirements of this section during the test phase.

Justification: During the ETMS test phase, the requirements for a daily or

after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

Section 236.587

Departure test. Waiver is requested exempting the ETMS from the requirements of this section during the test phase.

Justification: During the ETMS test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

Section 236.588

Periodic test. Waiver is requested exempting ETMS from the requirements of this section during the test phase.

Justification: During the ETMS test phase, the requirements for a departure test will be defined.

Section 236.703

Aspect. Clarification is requested exempting the ETMS display from this definition.

Justification: ETMS is not an automatic cab signal system.

Section 236.805

Signal, cab. Clarification is requested exempting the ETMS display from this definition.

Justification: ETMS is not an automatic cab signal system.

Section 240.127

Criteria for examining skill performance. Waiver is requested exempting ETMS from the testing requirements of this section during the test phase.

Justification: Criteria and procedures for ETMS performance evaluation do not yet exist; they will be identified and defined during the ETMS test phase.

Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting ETMS from the performance monitoring procedures during the ETMS test phase.

Justification: Criteria and procedures for ETMS performance evaluation do not yet exist; they will be identified and defined during the ETMS test phase.

It is acknowledged for clarification that ETMS, when fully operative during the test phase, will comply with the following regulations:

Section 236.8

Operating characteristics of electromagnetic, electronic, or electrical apparatus. ETMS computing equipment will comply with this regulation.

Section 236.501

Forestalling device and speed control. ETMS is designed to enforce maximum authorized speeds, speed restrictions, slow speed and absolute stop. ETMS will comply with § 236.501 except for paragraph (b)(2).

Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. ETMS is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority; or the beginning of each speed restriction in the route.

Section 236.503

Automatic brake application; initiation when predetermined rate of speed exceeded. ETMS will comply with this regulation.

Section 236.505

Proper operative relation between parts along roadway and parts on locomotive. ETMS will function as intended under all conditions of speed, weather, oscillation and shock. ETMS will comply with this regulation.

Section 236.506

Release of brakes after automatic application. After an ETMS initiated brake application, brakes cannot be released until the train is stopped.

Section 236.507

Brake application; full service. ETMS will comply with this regulation.

Section 236.508

Interference with application of brakes by means of brake valve. ETMS equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509

Two or more locomotives coupled. ETMS will be made operative only on the controlling locomotive; however, ETMS tests that do not affect train operations may occur on the trailing locomotives.

Section 236.513

Audible indicator. The audible indicator for ETMS will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516

Power supply. ETMS equipment will have its own isolated power supply.

Section 236.565

Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading cock; requirement. Operation of the double-heading cock (cutoff pilot valve) will not cut out ETMS before the automatic brake is cut out.

Section 236.590

Pneumatic apparatus. Pneumatic apparatus will be inspected and cleaned as required.

Part 236 Subpart G

Definitions. As applicable except § 236.703 and § 236.805.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–15432) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on September 16, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–24421 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of

its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation

[Supplement to Waiver Petition Docket Number FRA–1999–6135]

As a supplement to New Jersey Transit (NJ Transit) Corporation's Petition for Approval of Shared Use and Waiver of Certain Federal Railroad Administration Regulations (the Waiver was granted by the FRA on December 3, 1999), NJ Transit seeks permanent waiver of compliance from additional sections of Title 49 of the CFR for operation of its Southern New Jersey Light Rail Transit (SNJLRT) system. NJ Transit is providing information regarding modifications made to specific components of the SNJLRT system and SNJLRT vehicle (and relevant procedures) since the effective date of the December 3, 1999 Waiver. NJ Transit submits that such modifications are not material and are consistent with the granted Waiver. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,* 65 FR 42529 (July 10, 2000). *See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems,* 65 FR 42626 (July 10, 2000).

In this regard, NJ Transit has advanced the design and construction of the SNJLRT system towards implementation (Fall 2003) and in the process, has identified the following additional regulations from which it hereby seeks waivers: 49 CFR Part 219 Control of Alcohol and Drug Abuse will comply with the accepted FTA drug and alcohol policy; Part 234.105(c)(3) Grade Crossing Signal Safety-SNJLRT vehicles are operated by one-person crews, thus the operator will not be able to leave the vehicle to flag the crossing; and Part 236 Rules, Standards and Instructions Governing the Installation, Inspection, Maintenance and Repair of Signal and Train Control Systems, Devices and Appliances (§§ 236.23, 236.502, 236.504, and 236.507)—the automatic train stop system will function differently than the automatic train stop systems contemplated by the requirements in these sections.

Since the Waiver granted to NJ Transit on December 3, 1999, NJ Transit has informed the FRA of three modifications made to certain components of the SNJLRT system.

1. *Intrusion Detection System (IDS) at Close Clearance Segments*—NJ Transit has identified two dual-track segments where the centerline track distance is less than 17 feet, which conflicts with Conrail's governing construction standards which recommends 17-foot track centers. It will install an Obstacle/Intrusion Detection System (IDS) similar to ones used in other light rail systems. In the event that the IDS is not operational on the service opening date, NJ Transit has offered a set of temporary operating measures to provide substitute means of mitigating potential hazards due to close proximity to the general railroad system.

2. *Adjacent Operations, Protection of Sidings*—At the time the original Petition was filed, the signal system and track configuration of the SNJLRT system were in the preliminary engineering phase. Final construction of the SNJLRT system has resulted in some ''as built'' variances related to the installation of derails on the SNJLRT system. In addition, NJ Transit has made changes with respect to rules governing the placement of Conrail cars on sidings.

3. *Emergency Brake Decals on Doors*—NJ Transit has decided to add a decal to the Emergency Door Opening Switch to emphasize its function to activate brakes in case of emergency. This decal will read, ''Brake For Emergency Use Only'' and the label will be applied below the switch. NJ Transit uses such a decal in its other passenger rail operations.

Since FRA has not yet completed its investigation of NJ Transit's petition, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board and that person will participate in the board's consideration of NJ Transit's waiver petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6135) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

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

Issued in Washington, DC, on September 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–24422 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2003–16197]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Americans with Disabilities Act

DATES: Comments must be submitted before November 25, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States

Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: *Americans with Disabilities Act*—Akira Sano, Office of Civil Rights, (202) 366–4018.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Americans with Disabilities Act (OMB Number: 2132–0555)

Background: On July 26, 1990, the President signed into law civil rights legislation entitled, ''The Americans with Disabilities Act of 1990'' (ADA) (Pub. L. 101–336). It contains sweeping changes for individuals with disabilities in every major area of American life. One key area of the legislation addresses transportation services provided by public and private entities. Some of the requirements under the ADA are: (1) No transportation entity shall discriminate against an individual with a disability in connection with the provision of transportation service; (2) All new vehicles purchased by public and private entities after August 25, 1990, must be readily accessible to and usable by persons with disabilities, including individuals who use wheelchairs; (3) Public entities that provide fixed route transit must provide complementary paratransit service for persons with disabilities, who are unable to use the fixed route system, that is comparable to the level of service provided to individuals without disabilities; and (4) Transit authorities who are able to substantiate that compliance with all service criteria of the paratransit provisions would cause undue financial burden, may request a temporary time extension in implementing ADA complementary paratransit service.

On September 6, 1991, DOT issued a final rule implementing the transportation provisions of ADA (Title 49 CFR parts 27, 37 and 38), which includes the requirements for complementary paratransit service by public entities operating a fixed route system and the provision of nondiscriminatory accessible transportation service. The regulation sets forth the changes needed to fulfill the Congressional mandate to substantially improve access to mass transit service for persons with disabilities. Effective January 26, 1997, paratransit plans are no longer required. However, if FTA reasonably believes that an entity may not be complying with all service criteria, FTA may require an annual update to the entity's plan. In addition, all other ADA compliance requirements must still be satisfied. The information collected provides FTA with a basis for monitoring compliance. The public entities, including recipients of FTA funds, are required to provide information during triennial reviews, complaint investigations, resolutions of complaints, and compliance reviews.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 100 hours for 50 respondents and 50 hours for 700 recipients.

Estimated Total Annual Burden: 40,000 hours.

Frequency: Annual.

Issued: September 9, 2003.

Rita L. Wells

Associate Administrator for Administration.

[FR Doc. 03–24427 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Permanent PATH Terminal at World Trade Center in New York, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FTA, in cooperation with the Port Authority of New York and New Jersey (PANYNJ), intends to prepare an Environmental Impact Statement (EIS) on a proposal to create a new Permanent Port Authority Trans Hudson (PATH) Terminal at the World Trade Center (WTC) site.

The proposed project would consist of a track and platform level, an associated mezzanine/fare equipment level, and a terminal building incorporating sub-grade pedestrian connections in all directions to adjacent streets, New York City Transit (NYCT) subways, and on and off-site developments. The PATH tubes, tracks, platforms, and mezzanine would be located on the west portion of the WTC site between Greenwich and West Streets as they were prior to the September 11, 2001, attacks that destroyed the World Trade Center and the previous World Trade Center PATH Terminal. The platform level would contain four platforms and five tracks, and fare equipment would be located on the mezzanine level. A new terminal building would be constructed with a connection to the PATH mezzanine below it. The terminal building would provide pedestrian access to PATH from three levels. The lower concourse would have connections to the future buildings on the WTC site and off-site development across West, Vesey, and Church Streets. The upper concourse level would reestablish access to the NYCT stations on the 1/9, N, R, and E routes and would provide a possible connection to NYCT's proposed Fulton Street Transit Center for access to NYCT stations on the 2, 3, 4, 5, J, M, Z, A, and C routes. (The Fulton Street Transit Center is the subject of a separate environmental review by FTA.) At street-level, patrons could access via Church Street. The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 and the applicable regulations implementing NEPA, as set forth in 23 CFR part 771 and 40 CFR parts 1500–1508.

The EIS will evaluate a No Action Alternative, a Build Alternative and any reasonable alternative generated by the scoping process. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, and Federal, state, regional and local agencies.

DATES: The public is invited to participate in project scoping on October 8, 2003, in New Jersey and on October 9, 2003, in New York at the locations identified under **ADDRESSES** below. To ensure that all significant issues are identified and considered, two sessions will be held at each meeting: 2 p.m. to 5 p.m. and 6 p.m. to 9 p.m. Poster boards depicting the project concept will be available for review at the meeting location. A formal presentation by the PANYNJ will be made at 2:30 p.m. and at 6:30 p.m. followed by the opportunity for the

public to comment on the scope of the EIS. Representatives of the PANYNJ will be available during the poster session for informal comments and questions. Those wishing to speak are required to register at the meeting location before 2:30 p.m. or 6:30 p.m. Additional speakers will be invited until there are no more requesting to be heard. Subsequent opportunities will be announced on the Internet, by mail, and through other appropriate means, and will be conducted throughout the study area. Additional information may be obtained from the project's Web site: *www.panynj.gov/PATHRestoration*. Written comments on the scope of the EIS should be sent to the PANYNJ Project Manager by 5 p.m. eastern daylight time on October 29, 2003, at the address given under **ADDRESSES** below.

ADDRESSES: The public scoping meeting in New York will be held at Alexander Hamilton Custom House, One Bowling Green, New York, New York. The New Jersey Scoping Meeting will be held at Hudson County Administration Annex Freeholder's Chambers, Jersey City, New Jersey. Both locations are accessible by persons with disabilities. If language translation or signing is needed, please notify PANYNJ at (212) 435–5599 at least one week in advance of the meeting. Written comments will be accepted at the meeting or may be sent to the following address at any time during the scoping period: Mr. Anthony Cracchiolo, PANYNJ Priority Capital Programs, 115 Broadway, 5th Floor, New York, NY 10006. The scoping document may also be requested by writing to this address or by calling (212) 435–5599. Requests to be placed on the project's mailing list may also be made by calling this number or writing to the project address above.

FOR FURTHER INORMATION CONTACT: Ms. Susan E. Schruth, Director, Lower Manhattan Recovery Office, Federal Transit Administration, One Bowling Green, Room 436, New York, NY 10004; Telephone: (212) 668–1770.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and PANYNJ invite interested individuals, organizations, Federal, State, and local agencies to provide comments on the scope of the Permanent WTC PATH Terminal EIS. During the scoping process, comments should focus on specific social, economic, and/or environmental issues to be evaluated, and on suggesting reasonable alternatives that may be less costly or have fewer environmental impacts while addressing the purpose and need for the project. To assist interested parties in formulating their comments, a scoping document has been prepared and is available on the PANYNJ Web site address noted above, or upon request from the PANYNJ representative identified above. The scoping information document includes the project's purpose and need, goals and objectives, a preliminary list of alternatives and a description of each, and environmental areas that will be addressed during the course of the study. An outline of the ongoing public participation effort is also contained in the information document and on the Internet site given above.

II. Description of the Project Area

PATH is a heavy-rail system that serves a total of 13 stations in New York and New Jersey. The terrorist attacks of September 11, 2001 (9/11), resulted in the destruction of the PATH Terminal at the World Trade Center. Prior to 9/11, PATH operated four routes, two of which terminated at the World Trade Center (WTC): Newark-WTC and Hoboken-WTC. In addition to providing direct service to Lower Manhattan from Newark, Jersey City, and Hoboken, intermodal connections along these routes allowed for transfers between PATH and New Jersey Transit (NJT) commuter rail, Newark city subway, New York City subways, trans-Hudson ferries, and the Hudson-Bergen Light Rail. Prior to 9/11, Lower Manhattan was the nation's third largest Central Business District with approximately 120 million square feet of office space. More than 388,000 employees worked in Lower Manhattan, 16 percent of whom commuted from New Jersey and other points west of the Hudson River. PATH served as the principal mode of travel for New Jersey's commuters to Lower Manhattan.

The WTC PATH Terminal was located within and beneath the WTC retail concourse on the western portion of the site. It provided a weatherproof connection to the WTC office towers and the World Financial Center. Street-level access served commuters traveling north, east, and south of the WTC site. Within the retail concourse, WTC PATH patrons could connect with subway stations on NYCT's 1/9, E, and N/R routes.

The WTC and its PATH Terminal were a major downtown destination for commuters and visitors. Patrons of the PATH system could easily access the WTC, World Financial Center, the Financial District, and the Civic Center. PATH served not only as the principal connection to Lower Manhattan for New Jersey's commuters but also as an important link between Lower Manhattan and office centers in Jersey City, Newark, and Hoboken.

III. Problem Identification

Prior to 9/11, the WTC PATH Terminal provided the primary transit link to Lower Manhattan from New Jersey, serving local markets in Hudson and Essex counties and providing a key linkage for New Jersey Transit rail commuters on routes at major transit hubs at Penn Station Newark and Hoboken Terminal. The WTC PATH Terminal served over 67,000 PATH passengers daily and was operating near capacity during peak hours. This Terminal was destroyed during the 9/11 terrorist attacks.

Since 9/11, PANYNJ has undertaken projects to temporarily restore PATH service to Lower Manhattan and to stabilize below-grade portions of the WTC site. PANYNJ is currently constructing a temporary PATH station with Federal Emergency Management Agency (FEMA) funding. Scheduled to open in November 2003, the temporary station is located in the southeast portion of the WTC site and will provide four tracks and three platforms in a configuration to accommodate 8-car PATH trains. The station will provide pedestrian access through the eastern portion of the WTC site to Church Street. Although the temporary WTC PATH station will allow restoration of service, it will not fully restore the pedestrian connections or the capacity that previously existed at the WTC PATH Terminal. Moreover, the temporary station was designed and constructed to have only a short-term service life to serve the transportation need while more lasting decisions about the WTC site are being made. Without a permanent Terminal, there will not be an adequate transit link between Lower Manhattan and New Jersey when the temporary PATH station must be retired in several years.

IV. Purpose and Need for the Proposed Action

The Permanent WTC PATH Terminal is proposed to be a full service, regional transportation hub that will be integrated with the existing and future transportation infrastructure, WTC site development, and the surrounding area. The project is needed to reestablish and enhance transportation facilities and infrastructure that existed at the WTC complex prior to September 11, 2001, and to ensure the long-term accessibility and economic vitality of Lower Manhattan.

V. Alternatives

Once the WTC site was stabilized after the destruction of 9/11, a review was undertaken by the PANYNJ to examine feasible alternatives for the reconstruction of a PATH Terminal. In developing these alternatives, PANYNJ considered the limitations of the previous WTC PATH Terminal and compatibility with other improvements proposed for downtown including the potential future Fulton Street Transit Center, reconstruction on the WTC site, and alternatives for Highway Route 9A. Four alternative locations were developed and evaluated: Reconstruction of PATH in the pre-9/11 location; new Church Street Terminal; new Vesey Street Terminal; and stub-end Broadway-Nassau Terminal. Preliminary analysis showed that both the Vesey and Broadway-Nassau Street options would not provide for significant improvements in service as compared to the pre-9/11 condition and would result in suspension of temporary PATH service during construction. While the Church Street option would provide for similar service and local transit connections as the pre-9/11 location, it would be more costly, would result in a longer connection to the World Financial Center, and would limit the development potential for the WTC site. After careful consideration of these design options, PANYNJ has opted to carry forward the pre-9/11 location for further study. Alternatives proposed for further study are:

- *No Action Alternative:* The No Action alternative consists of the transportation facilities and real estate development most likely to be in place in the design year if the proposed project is not built. The future No Action Alternative reflects the assumption that Lower Manhattan development is expected to return to pre-9/11 densities in the vicinity of the project. The No Action Alternative will serve as the baseline against which the operational impacts of the proposed project are compared. The baseline for measuring the construction impacts of the project will be the conditions at the time of construction if the project were not built. Today's traffic, noise, air quality, and other conditions provide the best available estimate of the construction period conditions without the project.
- *Proposed Action Alternative:* The proposed action would be to reconstruct the temporary WTC PATH station as a permanent terminal and to build a station house with above-grade connections to the street and below-grade pedestrian connections to the buildings on the WTC site, NYCT subways, and off-site developments across Church, Vesey, and West Streets. Since the reestablishment of the WTC PATH Terminal will support the larger redevelopment of Lower Manhattan, design alternatives for other projects may require modifications to the design of the Permanent WTC PATH Terminal. These station design options will be considered in the EIS.

VI. Potential Adverse Effects

Upon its completion, the proposed Permanent WTC PATH Terminal is expected to restore and enhance the transit service to Lower Manhattan with few, if any, long-term adverse operational effects. In light of this, and in consideration of other new construction activity that is expected to occur in Lower Manhattan over the next decade, it is anticipated that construction-related impacts from the proposed project may be the most important aspect of the environmental evaluation under NEPA. Potential effects associated with the construction phase include impacts to: Vehicular and pedestrian access and circulation; noise and vibration; air quality; architectural and archeological resources; water quality; potential disturbance to contaminated and/or hazardous materials, which may be present in the area; economic conditions; and neighborhood character. The short-term cumulative effects of construction of this project and other Lower Manhattan recovery projects will be a major focus of the impact assessment. The long-term operational issues and impacts of the alternatives to be considered in the EIS include economic development; neighborhood character; cultural resources; transit operations; and pedestrian circulation to, from, and within the Terminal. In addition, the EIS will describe the methodology used to assess impacts; identify the affected environment; and identify opportunities and measures for mitigating adverse impacts that are unavoidable.

VII. FTA Procedures

During the NEPA process, FTA also will comply with the requirements of the National Historic Preservation Act (16 U.S.C., 469–470), Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), and other applicable environmental statutes, rules, and regulations, in accordance with FTA policy.

After the scoping process, a Draft EIS will be prepared and made available for public and agency review and comment. One or more public hearings will be held on the Draft EIS. On the basis of the Draft EIS and the public and agency comments thereon, a preferred alternative will be selected and will be fully described and further developed in the Final EIS.

Issued on: September 17, 2003.

Susan E. Schruth,

Director, Lower Manhattan Recovery Office.

[FR Doc. 03–24433 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16198]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel STEEL AWEIGH.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16198 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 27, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16198. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th

St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STEEL AWEIGH is:

Intended Use: ''Cruise tours; dive charter; small catered events; bed & breakfast.''

Geographic Region: ''Washington State.''

Dated: September 17, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–24334 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13989; Notice 2]

Rejection of Petition for Determination of Inconsequential Noncompliance

On September 12, 2002, Glaval Bus Inc. (Glaval) notified the National Highway Traffic Safety Administration (NHTSA) that it had determined that a total of 900 ''Glaval Model Universal, Primetime, & Titan buses'' manufactured between January 1999 and August 16, 2002, did not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Glaval also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h), on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on December 18, 2002, in the **Federal Register** (67 FR 77558). NHTSA received no comments on this application during the 30-day comment period.

Since the publication of the notice of receipt of application, NHTSA has learned that all of the buses that are the subject of the September 12, 2002 petition have a gross vehicle weight rating of more than 10,000 pounds. In a March 23, 1999 letter to Mr. Lawrence F. Henneberger of Arent, Fox, Kintner, Plotkin and Kahn, NHTSA interpreted the labeling requirements of FMVSS No. 208 ''as applying only to passenger cars and to trucks, buses and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.'' Therefore, the labels installed in the Glaval buses are voluntary and do not have to comply with the prohibition in S4.5.1(b)(5) (previously S4.5.1(b)(3)) against any other information from being on the same side of the sun visor as the air bag warning label, except an air bag maintenance label or a utility vehicle rollover warning label. Since there is no noncompliance, the petition for a determination that the noncompliance is inconsequential is moot and is therefore rejected. Accordingly, Glaval is not required to notify owners and recall its buses.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: September 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–24428 Filed 9–25–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34404]

East Tennessee Railway, L.P.—Lease and Operation Exemption—CSX Transportation, Inc.

East Tennessee Railway, L.P. (ETRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease, from CSX Transportation, Inc. (CSXT), and operate 5.0 miles of track, which includes 4.05 miles of rail line and two short spurs, known as Johnson City Lead and Carnegie Spur, in Washington County, TN. The line extends from milepost ZJ 0.05 to milepost ZJ 4.10 near Johnson City. The two spurs extend west from the line in Johnson City and to the south of the city.[1]

ETRY certifies that its projected revenues as a result of this transaction will not exceed $5 million, and thus that the transaction will not result in the creation of a Class II or Class I rail carrier. ETRY intends to consummate the transaction as soon as possible after September 5, 2003, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34404, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Donald G. Avery, Slover & Loftus, 1224 17th St., NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–24389 Filed 9–25–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 210X)]

Union Pacific Railroad Company—Abandonment Exemption—in Maricopa County, AZ

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.1-mile line of railroad, known as the Creamery Spur, extending from milepost 914.3 to milepost 916.4 near University Drive between Priest Drive and Hayden Road in Tempe, Maricopa County, AZ. The line traverses United States Postal Service Zip Code 85281.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the

[1] ETRY and CSXT have agreed on the terms of the lease that will cover this transaction, and expect to execute a written lease agreement prior to consummation of the acquisition.

Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 28, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 6, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 16, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 3, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by September 26, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: September 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–24390 Filed 9–25–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of International Affairs; Survey of U.S. Ownership of Foreign Securities as of December 31, 2003

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of U.S. ownership of foreign securities as of December 31, 2003. This Notice constitutes legal notification to all United States persons who are in the reporting panel set forth in this Notice that they must respond to this survey. Additional copies of the reporting form SHCA and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms.html.*

Who Must Report: It is expected that reporting will be required only from those organizations which reported the largest values of securities data on the benchmark survey Form SHC entitled ''U.S. Ownership of Foreign Securities, Including Selected Money Market Instruments as of December 31, 2001''. The panel for this survey is expected to include: The 36 largest custodians and largest end-investors that filed schedule 2 in the aforementioned 2001 benchmark survey; and 194 of the next largest end-investors that filed schedule 3 in the aforementioned 2001 benchmark survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on U.S. resident holdings of foreign securities, *i.e.* equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHC.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001.

When To Report: Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 5, 2004.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 03–24325 Filed 9–25–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C.

chapter 35), the OCC, the Board, and the FDIC (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

During the second quarter of 2003, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment on the extension, without revision, of the currently approved information collections: the Foreign Branch Report of Condition (FFIEC 030). In response to a comment letter received, the FFIEC, of which the agencies are members, will modify the information collection to eliminate two items and redefine four items. The agencies are now submitting requests to OMB for approval of the extension, with revision, of the FFIEC 030 report.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0099, 250 E Street, S.W., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, S.W., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to ''Foreign Branch Report of Condition, 7100–0071,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All comment should refer to ''Foreign Branch Report of Condition, 3064–0011.'' Commenters are encouraged to submit comments by fax or electronic mail [FAX number (202) 898–3838; Internet address: *comments@fdic.gov]*. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Request for OMB approval to extend for three years with revision the following currently approved information collections:

Title: Foreign Branch Report of Condition

Form Number: FFIEC 030

Frequency of Response: Annually, and quarterly for significant branches

Affected Public: Business or other for–profit

For OCC:

OMB Number: 1557–0099

Number of Respondents: 112 annual respondents; 47 quarterly respondents

Estimated Time per Response: 3.7 burden hours.

Estimated Total Annual Burden: 1,110 burden hours.

For Board:

OMB Number: 7100–0071

Number of Respondents: 72 annual respondents; 26 quarterly respondents

Estimated Time per Response: 3.7 burden hours.

Estimated Total Annual Burden: 651 burden hours.

For FDIC:

OMB Number: 3064–0011

Number of Respondents: 16 annual respondents

Estimated Time per Response: 3.7 burden hours.

Estimated Total Annual Burden: 59 burden hours.

General Description of Report: These information collections are mandatory: 12 U.S.C. 321, 324, and 602 (Board); 12 U.S.C. 602 (OCC); and 12 U.S.C. 1828 (FDIC). These information collections are given confidential treatment (5 U.S.C. 552 (b)(8)). Small businesses (that is, small banks) are not affected.

Abstract: This report contains asset and liability information for foreign branches of insured U.S. commercial banks and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. commercial banks. All foreign branches of U.S. banks regardless of charter type file this report with the appropriate Federal Reserve District Bank. The Federal Reserve collects this information on behalf of the U.S. bank's primary federal bank regulatory agency.

Current Actions: On May 8, 2003, the OCC and the Board published a notice soliciting comment for 60 days on the proposed extension, without revision, of the FFIEC 030 (68 FR 24741). The FDIC published a separate notice proposing extension, without revision, of the FFIEC 030 on April 21, 2003 (68 FR 19542). The agencies received one comment letter from a bankers association on the proposed extension. The comment noted that banks are currently required to report on the FFIEC 030 the net amounts due from or due to related institutions of the consolidated bank on separate lines according to institution type: other foreign branches, the head office and U.S. branches, and the consolidated subsidiaries of the bank. The association indicated that providing this level of detail is particularly burdensome and

requested that branches instead report only the gross amounts due to and due from related entities as a group.

After considering the comments received, the FFIEC and the agencies decided to modify the information collected on the net due from and the net due to related institutions to collect a two–way breakout of these items on a gross basis. Specifically, Assets item 10, ''Net due from other foreign branches of this bank,'' and item 11, ''Net due from head office and U.S. branches of this bank'' will be combined and collected as a single item on a gross basis. Assets item 12, ''Net due from consolidated subsidiaries of this bank,'' will be modified to be reported on a gross basis. Similarly, Liabilities item 21, ''Net due to other foreign branches of this bank,'' and item 22, ''Net due to head office and U.S. branches of this bank'' will be combined and collected as a single item on a gross basis. Liabilities item 23, ''Net due to consolidated subsidiaries of this bank,'' will be modified to be reported on a gross basis. This modification will take effect as of the December 31, 2003, report date.

In making this change, the FFIEC and the agencies concluded that combining the separate items that distinguish a foreign branch's funding to or from U.S. offices of the bank from its funding to or from other foreign offices of the bank into items covering all intrabank funding will provide adequate information for supervisory purposes. However, sources of funding to subsidiaries of U.S. banks, and particularly funding of foreign subsidiaries of U.S. banks, remains a concern to the agencies. To the extent that foreign branches provide funding to subsidiaries, financial or economic disruption in foreign countries could have an adverse effect on both entities. Also in certain cases, foreign authorities may limit the transactions of local subsidiaries, and thus foreign branches' claims on their related subsidiaries could become impaired. Collecting information on the branches' due from and due to position with consolidated subsidiaries of the bank provides the agencies with the ability to monitor such positions on an ongoing basis.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: September 3, 2003.

Mark J. Tenhundfeld

Assistant Director, Legislative and Regulatory Activities DivisionOffice of the Comptroller of the Currency

Board of Governors of the Federal Reserve System, September 17, 2003.

Jennifer J. Johnson

Secretary of the Board

Dated at Washington, D.C., this 17 day of September, 2003.

FEDERAL DEPOSIT INSURANCE CORPORATION.

Robert E. Feldman

Executive Secretary

[FR Doc. 03–24314 Filed 9–25–03; 8:45 am]

BILLING CODES OCC: 4810–33–S 1/3; Board: 6210–01–S 1/3; FDIC: 6714–01–S 1/3

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 972

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 Form 972, Consent of Shareholder To Include Specific Amount in Gross Income.

DATES: Written comments should be received on or before November 25, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Consent of Shareholder To Include Specific Amount in Gross Income.

OMB Number: 1545–0043.

Form Number: 972.

Abstract: Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Responses: 400.

Estimated Time Per Response: 55 minutes.

Estimated Total Annual Burden Hours: 368.

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: September 12, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24417 Filed 9–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2063

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 Form 2063, U.S. Departing Alien Income Tax Statement.

DATES: Written comments should be received on or before November 25, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue, Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Departing Alien Income Tax Statement.

OMB Number: 1545–0138.

Form Number: 2063.

Abstract: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,540.

Estimated Time Per Response: 50 minutes.

Estimated Total Annual Burden Hours: 17,048.

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: September 16, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24418 Filed 9–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0386.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0386'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38 U.S.C., section 3729(a) requires VA to collect a funding fee in connection with guaranteed or direct loans. The fee is payable for both home and manufactured home loans. To be eligible for guaranty, reports of loan disbursement and automatic loan reports for loans must include either a receipt showing that the funding fee has

been paid or evidence that the veteran is exempt from the requirement of paying the fee. Lenders are required to submit VA Form 26–8923 with VA Form 26–1820, Report and Certification of Loan Disbursement, as applicable, when requesting guaranty on an interest rate reduction refinancing loan. VA loan examiners must assure that the requirements of the Deficit Reduction Act of 1984, 38 U.S.C. 3710(a)(8) or 3712(a)(1)(F), and applicable VA regulations are met before the issuance of guaranty. The form ensures that lenders correctly compute the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 19, 2003 at page 13364.

Affected Public: Business or other for profit.

Estimated Annual Burden: 16,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 100,000.

Dated: September 15, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–24305 Filed 9–25–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 187

Friday, September 26, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Special Use Permits for Outfitter and Guide Operations on the Lower Rogue and Lower Illinois Rivers, Siskiyou National Forest, Curry County, OR

Correction

In notice document 03–22491 beginning on page 52562 in the issue of Thursday, September 4, 2003, make the following corrections:

1. On page 52563, in the third column, in the third line, ''wild'' should read, ''Wild''.

2. On the same page, in the same column, in the seventh line, ''rogue'' should read, ''Rogue''.

3. On page 52564, in the first column, in the first full paragraph, in the first line, ''get'' should read, ''eight''.

4. On the same page, in the same column, in the same paragraph, in the second line, ''operating the wild Section who'' should read, ''operating in the Wild Section who were''.

5. On the same page, in the same column, in the same paragraph, in the seventh line, ''autohrize'' should read, ''authorize''.

6. On the same page, in the same column, in the second full paragraph, in the 10th line from the bottom, ''cumulative'' should read, ''cumulatively.''.

7. On the same page, in the same column, in the last paragraph, in the third line, ''guest'' should read, ''guests''.

[FR Doc. C3–22491 Filed 9–25–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
September 26, 2003

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 2 and 7

Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. 2003–T–010]

RIN 0651–AB45

Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is adding new regulations to implement the Madrid Protocol Implementation Act of 2002 (MPIA), and is amending existing regulation both to implement the MPIA and to otherwise clarify and improve the procedures for processing trademark applications and conducting proceedings before the Trademark Trial and Appeal Board. The MPIA provides that: The owner of a U.S. application or registration may seek protection of its mark in any of the other 58 countries party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) by submitting a single international application through the Office to the International Bureau of the World Intellectual Property Organization (IB); and the owner of an application or registration in a country party to the Madrid Protocol may obtain an international registration from the IB and request an extension of protection of its mark to the United States.

DATES: *Effective Date*: November 2, 2003.

Applicability Dates: New rules added as part 7 of 37 CFR and the amendments to rules in part 2 of 37 CFR shall apply to any application for international registration filed on or after November 2, 2003, and any application for registration in the United States under section 1, section 44 or section 66(a) of the Act filed on or after November 2, 2003, except as noted below.

Drawing requirements under § 2.52: Applicants with pending applications filed prior to November 2, 2003, will not be required to file amended drawings. However, applicants may voluntarily amend their drawings to comply with the new standard character or color drawing requirements. See discussion below of changes to § 2.52. The Office will consider voluntary amendments filed on or after November 2, 2003, in accordance with standard procedures for processing of amendments.

Partial abandonment under § 2.65(a): This rule as amended shall apply to all Office actions issued on or after November 2, 2003, even if the application was filed prior to that date. See discussion below of the changes to § 2.65.

Requests to extend the time to file an opposition under § 2.102(c): If a first request for an extension of time to oppose was filed before November 2, 2003, the rules in effect on the filing date of that first request will apply to the first request and any subsequent request filed by the same potential opposer or one in privity with it. If a first request for an extension of time to oppose is filed on or after November 2, 2003, the amended regulation will apply to the first request and any subsequent request filed by the same potential opposer or one in privity with it.

Petitions to the Director under § 2.146(i): For petitions filed on or after May 2, 2004, petitioners will be held to the new six-month standard of diligence in monitoring the status of applications and registrations. Petitions filed prior to May 2, 2004, will be reviewed under the one-year diligence standard, even if the application was filed on or after November 2, 2003. See the discussion below of changes to § 2.146(i).

FOR FURTHER INFORMATION CONTACT: Cheryl L. Black, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 153, or by e-mail to *cheryl.black@uspto.gov.*

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making was published in the **Federal Register** (68 FR 15119) on March 28, 2003. A public hearing was held on May 30, 2003.

Four organizations, two law firms, seven attorneys, one business and three individuals submitted written comments. Two organizations and one attorney testified at the oral hearing.

The Madrid Protocol Implementation Act of 2002, Public Law 107–273, 116 Stat. 1758, 1913–1921 (MPIA) amends the Trademark Act of 1946 to implement the provisions of the Madrid Protocol in the United States. The MPIA was enacted on November 2, 2002, and becomes effective on November 2, 2003.

The Madrid Protocol and the Common Regulations Under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (April 1, 2002) (Common Regulations) are available on the World Intellectual Property Organization's (WIPO) Web site, currently at *http://www.wipo.int/madrid/en/*. The Common Regulations are the procedures agreed to by the parties to the Madrid Protocol regarding the administration of the Madrid Protocol, pursuant to Article 10(2)(iii).

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051, *et seq.*, as amended by the MPIA. The ''TMEP'' referenced below is the *Trademark Manual of Examining Procedure* (3rd ed. Rev. 2, May 2003).

Filings Under Madrid Protocol

Background

The Madrid Protocol provides a system for obtaining an international registration. The IB maintains the system in accordance with the guidelines set forth in the Common Regulations. To apply for an international registration under the Madrid Protocol, an applicant must be a national of, be domiciled in, or have a real and effective business or commercial establishment in one of the countries that are members of the Madrid Protocol (Contracting Parties). An international application must be based on a trademark application or registration in one of the Contracting Parties (basic application or basic registration). The international application must be for the same mark and include a list of goods and/or services identical to or narrower than the list of goods and/or services in the basic application or registration. The international application must designate one or more Contracting Parties in which an extension of protection of the international registration is sought.

The international application must be submitted through the trademark office of the Contracting Party in which the basic application is pending or basic registration is held (office of origin). The office of origin must certify that the information in the international application corresponds with the information in the basic application or registration, and transmit the international application to the IB.

The IB will review an international application to determine whether the Madrid Protocol filing requirements have been met and the required fees have been paid. If an international application is unacceptable, the IB will notify both the applicant and the office of origin of the ''irregularity.'' If the Madrid Protocol requirements have been met and the fees have been paid, the IB will immediately register the mark, publish the international registration in the *WIPO Gazette of International Marks,* send a certificate to the holder, and notify the offices of the designated Contracting Parties in which an extension of protection of the international registration is sought.

Registration by the IB does not mean that the mark is automatically granted protection in the designated Contracting Parties.

The holder of an international registration may designate additional Contracting Parties in a subsequent designation. A subsequent designation is a request by the holder of an international registration for an extension of protection of its international registration to additional Contracting Parties. Each Contracting Party designated in an international application or subsequent designation will examine the request for extension of protection as a national application under its laws, and if it complies with the requirements for registration, grant protection of the mark in its country. A Contracting Party must notify the IB of the refusal of a request for extension of protection within the time limits set forth in Article 5(2) of the Madrid Protocol. If a notification of refusal is not sent to the IB within the required time limits, the Contracting Party must grant protection of the mark in its country.

Discussion of Specific Rules Added or Changed

The Office is adding new rules setting forth the requirements for submitting international applications and subsequent designations through the Office for forwarding to the IB. The Office is also adding new rules for processing requests for extension of protection of international registrations to the United States, and changing current regulations to bring the rules of practice in trademark cases into conformance with the MPIA.

New Rules Added as Part 7

The Office is adding rules 7.1, 7.3, 7.4, 7.6, 7.7, 7.11, 7.12, 7.13, 7.14, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31, 7.36, 7.37, 7.38, 7.39, 7.40, and 7.41; and designating part 7 of 37 CFR as the rules of practice in filings pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

Section 7.1 defines certain terms used in this part. Terms defined in the MPIA are not included in the list of definitions in § 7.1.

Section 7.3 requires that correspondence relating to international applications and registrations be in English.

Section 7.4 states that correspondence submitted through the Trademark Electronic Application System (TEAS) will be accorded the date and time the complete transmission is received in the Office based on Eastern Time.

Fees

Section 7.6 sets forth the fees required by the Office for processing correspondence relating to international applications and registrations under the Madrid Protocol. These fees must be paid in U.S. dollars at the time of submission.

The Office is charging fees for: (1) Reviewing and certifying an international application; (2) transmitting a subsequent designation; (3) transmitting a request to record an assignment or restriction (usually a security interest), or the release of a restriction, of a holder's right of disposal of an international registration; (4) requesting a notice of replacement; and (5) filing an affidavit of use in commerce or excusable nonuse for a mark in a registered extension of protection to the United States.

In addition to the fees required by the Office, there are international fees for processing international applications and registrations. Section 7.7 sets forth the international fees that may be paid to the IB through the Office in connection with international applications and registrations, and the requirements and procedures for submitting those fees through the Office. A schedule of the international fees is currently posted on the WIPO Web site, available at *http://www.wipo.int/madrid/en/.* An international applicant or holder may pay the fees directly to the IB, or to the IB through the Office. Fees paid directly to the IB must be paid in Swiss francs, and fees paid through the Office must be paid in U.S. dollars.

Under § 7.7(b), if an international applicant or holder pays the international fees through the Office, payment must be made at the time of submission by any of the acceptable payment methods set forth in §§ 2.207 and 2.208. If the international fees are paid directly to the IB using an acceptable form of payment established by the IB, the international applicant or holder must include the IB account number for debiting fees or the IB receipt number as proof of payment of fees in its submission to the Office. The fee calculator and acceptable methods for paying fees to the IB may currently be viewed on the WIPO Web site at *http://www.wipo.int/madrid/en/.*

International Applications Originating From the United States

The requirements for granting a date of receipt to an international application are set forth in § 7.11(a). An international application must identify at least one basic application or registration. The international application may be based on more than one U.S. application and/or registration, provided that the owner and the mark are the same for each basic application or registration.

An international application must be submitted through TEAS. The Office has developed a TEAS form for filing an application for international registration that conforms to the official IB form created by WIPO. TEAS will require the applicant to select between two different types of forms, namely, a pre-populated form containing information from the basic application or registration, or a free-text form. The applicant can use the pre-populated form if: (1) The international application is based on a single basic application or registration; and (2) applicant's changes to the international application are limited to narrowing the list of goods or services. For all other international applications, the applicant must fill in all the fields in the free text form.

Section 7.11(a)(3) requires a reproduction of the mark in the international application that is the same as the mark in the basic application or registration, and that meets the drawing requirements of § 2.52. If the mark in the basic application or registration is depicted in black and white and does not include a color claim, the reproduction of the mark in the international application must be black and white. If a mark is depicted in black and white in the basic application or registration but there is a claim of color, the international application must include both a black and white reproduction of the mark and a color reproduction of the mark. If the mark in the basic application or registration is in color, the reproduction of the mark in the international application must be in color.

Under §§ 7.11(a)(4) and 7.12, if color is claimed as a feature of the mark, the same color claim must be made in the international application. If color is not claimed as a feature of the mark in the basic application or registration, the international application may not include a claim of color.

Under § 7.11(a)(5), if the basic application or registration includes a description of the mark, the international application must include the same description of the mark.

Under § 7.11(a)(6), if the mark in the basic application or registration is a three-dimensional mark, sound mark, collective mark or certification mark, the international application must indicate the type of mark.

Section 7.11(a)(7) requires a list of goods and/or services in the international application that is

identical to or narrower than the list of goods and/or services in the basic application or registration, and is classified according to the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.* An applicant may omit or revise goods and/or services from the international application as long as the omission or revision does not broaden the scope of the goods or services identified in the basic application or registration.

The pre-populated form will include the list of goods/services in the basic application or registration. The applicant may edit the list of goods and/or services by either omitting particular goods or services or revising the description of goods or services populated from the basic application or registration. In the free text form, the applicant must enter the goods/services manually. The applicant may omit goods or services, or revise the list of goods/services. The list of goods and services for each designated Contracting Party must be identical to or narrower than the list of goods or services in the international application.

Both the pre-populated form and the free-text form will also allow an applicant to change the classification of goods and services in an international application. If the goods or services in the basic application or registration are classified in U.S. Classes A, B or 200 or entirely under the U.S. classification system, an applicant may want to reclassify goods or services into international classes. Classes A, B and 200 are not part of the international classification system under the Nice Agreement. Failure to properly classify goods or services in an international application according to the international classification system under the Nice Agreement may result in an IB notice of irregularity. The Office will issue an examination guide regarding classification on or before November 2, 2003.

Under § 7.11(a)(8), an international applicant must designate at least one Contracting Party in which it seeks an extension of protection.

Under § 7.11(a)(9), the international applicant must pay the U.S. certification fee and the international fees (*see* § 7.7) for all classes and all designated Contracting Parties at the time of submission.

Under section 61 of the Act, and § 7.11(a)(10), an international applicant must specify that applicant is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States. If the applicant is not a national of the United States and the applicant's address on the application is outside of the United States, the applicant will be required to provide the address of the U.S. domicile or establishment.

Section 7.13 sets forth the requirements for certifying and forwarding an international application to the IB. Under § 7.13(a), if an international application meets the requirements of § 7.11(a), the Office will grant a date of receipt, certify that the information contained in the international application corresponds to the basic application or registration, and forward the international application electronically to the IB.

The Office must certify and forward an international application to the IB within two months of the date of receipt in the Office in order to provide the applicant with an international registration date as of the date of receipt of the international application in the Office. The Office will automatically certify and forward to the IB all international applications based on a single basic application or registration, with no limitations on the goods/services and no color claim, that meet the requirements of § 7.11(a). Limited review by the Madrid Processing Unit (MPU) is required for international applications where the goods or services have been narrowed or a color drawing is attached. International applications that are completed on free text forms are reviewed by the MPU. The use of a fully automated filing system expedites the processing of international applications because information is either pre-populated from Office records or entered by the applicant directly into the Office's automated systems, and electronically reviewed for certification.

Section 7.13(b) states that if the Office cannot certify that the information contained in the international application corresponds with the information in the basic application or registration, the Office will notify the applicant that the international application cannot be certified. Any international fees (*see* § 7.7) paid through the Office will be refunded; however, the Office will not refund the certification fee.

Correcting Irregularities in International Application—§ 7.14

The IB will notify both the international applicant and the Office of any irregularities in an international application. Under Rule 11 of the Common Regulations, the international applicant must correct certain irregularities through the Office. Fees for correcting irregularities in an international application must be paid directly to the IB. All other irregularities requiring applicant's response may either be submitted through the Office or filed directly at the IB. Section 7.14(b) sets forth the types of irregularities that must be corrected through the Office, and § 7.14(e) sets forth the procedures for responding to irregularities through the Office.

To be considered timely, responses to IB notices of irregularities must be received by the IB before the end of the response period set forth in the IB's notice. Receipt in the Office does not fulfill this requirement.

Information about filing directly with the IB is available on the WIPO Web site, currently at *http://www.wipo.int/madrid/en/.* The applicant may contact the IB by mail to the World Intellectual Property Organization, 34 chemin des Colombettes, PO Box 18, CH–1211 Geneva 20, Switzerland; by telephone at 41 22 338 9111; by fax to 41 22 740 1429; or by e-mail to *intreg.mail@wipo.int.*

Irregularities in Classification and Identification of Goods/Services

Rules 12 and 13 of the Common Regulations provide that the IB will not consider a response to irregularities in classification or identification of goods and/or services unless the response is submitted through the office of origin. Section 7.14(b) therefore requires that an international applicant respond to irregularities in classification and identification of goods and/or services through the Office. Because the Office must certify that the goods or services in an applicant's response are within the scope of the basic application or registration at the time the response is filed, responses to irregularities in the identification will be reviewed by the MPU.

If the goods or services in the basic application or registration have been amended since the date the international application was submitted to the Office, the goods and services in the response to the IB notice must be within the scope of the amended goods and services. If the response includes goods and services that exceed the scope of the goods and services in the basic application or registration as amended, the MPU will reject the response and notify the applicant. If there is time remaining in the IB response period, the applicant may submit a corrected response. If the goods and services in an applicant's response do not exceed the scope of the goods and services in the basic application or registration as amended, and the IB response period has not

expired, the MPU will certify the goods and services and forward the response to the IB.

Fees To Correct Irregularities Must Be Paid Directly to the IB

Section 7.14(c) provides that fees for correcting irregularities in an international application must be paid directly to the IB. This is true even if the applicant is filing a response to correct other irregularities through the Office. At this time, the Office's automated system cannot process fees to correct irregularities in an international application.

Other Irregularities Requiring Response From Applicant

Under § 7.14(d), applicants may respond to all other irregularities either through the Office in accordance with § 7.14(e), or directly at the IB. The Office will not respond to any irregularities on behalf of an applicant. Except for an applicant's response to irregularities in the identification of goods and services, the Office will not review responses to IB notices of irregularities.

Procedures for Responding to IB Notices of Irregularities Through the Office

To be considered timely, responses to IB notices of irregularities must be received by the IB before the end of the response period set forth in the IB's notice. Receipt in the Office does not fulfill the requirement for timely submission to the IB.

Under § 7.14(e), the Office requires that applicants use TEAS to submit responses through the Office. Responses submitted through the Office for forwarding to the IB should be submitted as soon as possible, but at least one month before the end of the response deadline set forth in the IB's notice. The Office will not process any response submitted to the Office after the IB response deadline.

Subsequent Designations—§ 7.21

Section 64 of the Act and § 7.21 permit the holder of an international registration to submit a subsequent designation through the Office, if: (1) The international registration is based on a U.S. application or registration; and (2) the holder of the international registration is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States. The holder also has the option of filing a subsequent designation directly with the IB.

Under § 7.21, if a subsequent designation is submitted through the Office, it must be submitted through TEAS and include the international registration number, the name and address of the holder of the international registration, one or more Contracting Parties in which an extension of protection is sought, and a list of goods and/or services that is identical to or narrower than the goods and/or services listed in the international registration. The holder can omit or revise goods and/or services from the subsequent designation as long as the omission or revision does not broaden the scope of the goods or services identified in the international registration. The holder must include the U.S. transmittal fee and all subsequent designation fees (*see* § 7.7) at the time of submission. The Office is not required to certify a subsequent designation.

The IB will review a subsequent designation for compliance with Rule 24 of the Common Regulations before forwarding the request for extension of protection to the designated Contracting Parties. If there are any irregularities in the subsequent designation, the IB will notify both the holder and the Office. The holder must file any responses to the notice or irregularities directly with the IB. The Office will not forward any responses to irregularities in a subsequent designation to the IB, even if the subsequent designation was submitted through the Office.

Recording Changes to International Registration

The IB shall record changes to international registrations pursuant to Articles 9 and 9bis of the Madrid Protocol. Section 7.22 requires that all requests to record changes to an international registration be filed at the IB, except in the limited circumstances in which an assignment, or restriction of a holder's right of disposal of an international registration or the release of such a restriction, must be submitted through the Office, as set forth in §§ 7.23 and 7.24. Section 10 of the Act and 37 CFR part 3 are not applicable to such assignments or restrictions.

The Office will not take note of an assignment or restriction of a holder's right of disposal of an international registration in its records unless the IB notifies the Office that the assignment or restriction has been recorded in the International Register. When the IB sends notice of an assignment of an international registration with an extension of protection to the United States, the MPU will update the ownership information in the Trademark database and forward the IB notice to the Assignment Services Division to update its automated records. An assignment of an extension of protection that has not been recorded at the IB will not be reflected in the Trademark database, even if the assignment has been inadvertently recorded by the Assignment Services Division.

Section 7.23 sets forth the limited circumstances in which a request to record an assignment of an international registration may be submitted through the Office. The Office will accept and forward to the IB a request to record an assignment of an international registration by an assignee who is a national of, is domiciled in or has a real and effective commercial or industrial establishment in the U.S. only if the assignee cannot obtain the assignor's signature for the request to record the assignment and the request meets the requirements of § 7.23.

Section 7.24 sets forth the limited circumstances in which a request to record a restriction of a holder's right of disposal of an international registration, or the release of such a restriction, may be submitted through the Office. Under § 7.24, the Office will accept for submission and forward to the IB a request to record a restriction of a holder's right of disposal of an international registration (usually a security interest), or the release of such a restriction, by a party holding the restriction who is a national of, is domiciled in or has a real and effective commercial or industrial establishment in the U.S. only if: (1) (i) The restriction is the result of a court order; or (ii) the restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal, and the signature of the holder of the international registration cannot be obtained; (2) the party who obtained the restriction is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States; and (3) the restriction or release applies to the holder's right to dispose of the international registration in the United States. The request must meet the requirements of § 7.24(b). The Office will charge a fee for transmitting a request to record an assignment or restriction, or the release of a restriction, to the IB.

Requests for Extension of Protection to the United States

Under section 65 of the Act, the holder of an international registration may request an extension of protection of the international registration to the United States, provided the international registration is not based on a U.S. application or registration.

The holder may file with the IB a request for extension of protection to the United States in either an international application or a subsequent designation. Section 66(a) of the Act requires that a request for extension of protection to the United States include a declaration of bona fide intention to use the mark in commerce that the United States Congress can regulate. The allegations in a verified statement required by an international applicant or holder seeking an extension of protection of an international registration to the United States are set forth in § 2.33(e). See discussion below of new § 2.33(e). The IB will certify that the request for extension of protection contains a properly signed declaration of bona fide intention to use the mark in commerce when it forwards the request to the Office. The declaration will remain part of the international registration on file at the IB.

The IB will forward the request for extension of protection to the Office electronically. A holder cannot file a request for extension of protection to the United States directly with the Office.

Section 7.25 provides that for purposes of examination and opposition, a request for an extension of protection to the United States will be referred to as an application for registration under section 66(a) of the Act; that references to ''applications'' and ''registrations'' in 37 CFR part 2 include extensions of protection to the United States; and that upon registration, an extension of protection will be referred to as a ''registration,'' a ''registered extension of protection,'' or a ''section 66(a) registration.'' With the exception of §§ 2.130–2.131, 2.160–2.166, 2.168, 2.172, 2.173, 2.175 and 2.181–2.186, all the sections in 37 CFR parts 2 and 10 apply to a request for extension of protection to the United States.

Under § 7.26, the filing date of a request for extension of protection to the United States for purposes of examination in the Office is: (1) The international registration date, if the request for extension of protection to the United States was made in the international application, or (2) the date the IB recorded the subsequent designation, if the request for extension of protection to the United States was made in a subsequent designation. Under section 66(b) of the Act, the filing date of the extension of protection will be considered the date of constructive notice pursuant to section 7(c) of the Act.

Under section 67 of the Act and § 7.27, the holder of an international registration may claim priority under Article 4 of the Paris Convention for the Protection of Industrial Property if: (1) The request for an extension of protection contains a claim of priority; and (2) the international registration date or the date of recordal of the subsequent designation at the IB requesting an extension of protection to the United States is no later than six months after the filing date of the application that formed the basis of the claim of priority.

Replacement

Under Article 4bis of the Madrid Protocol, where a mark that is the subject of a national or regional registration in the Office of a Contracting Party is also the subject of an international registration and both registrations are in the name of the same person, the international registration is deemed to replace the national or regional registration, without prejudice to any rights acquired by virtue of the latter, provided that: (1) The protection resulting from the international registration extends to that Contracting Party; (2) all the goods and services listed in the national or regional registration are also listed in the international registration with respect to that Contracting Party; and (3) the extension of protection takes effect after the date of the national or regional registration.

Under section 74 of the Act and § 7.28(a), a registered extension of protection to the United States affords the same rights as a previously issued U.S. registration if: (1) Both registrations are owned by the same person and identify the same mark; and (2) the goods/services in the previously issued U.S. registration are covered by the registered extension of protection. Under § 7.28(b), the holder of a registered extension of protection may request that the Office note in its records replacement of the earlier U.S. registration by the extension of protection. The Office will require a fee to note replacement.

Under § 7.29, the replaced U.S. registration will remain in force, unless cancelled, expired or surrendered, as long as the owner files affidavits or declarations of use or excusable nonuse under section 8 of the Act and renews the registration under section 9 of the Act.

Effect of Cancellation or Expiration of International Registration on Extension of Protection

Under section 70 of the Act and § 7.30, the Office will cancel a pending or registered extension of protection to the United States, in whole or in part, if the IB notifies the Office of the cancellation or expiration of the corresponding international registration, in whole or in part.

Transformation

Under section 70(c) of the Act and § 7.31, if an international registration is cancelled, in whole or in part, by the IB at the request of the office of origin under Article 6(4) of the Madrid Protocol (due to the cancellation or expiration of the basic application or registration), the holder of the international registration may file a request to transform the corresponding extension of protection to the United States into an application under sections 1 and/or 44 of the Act. If only a portion of the cancelled goods and services in the international registration pertains to the extension of protection to the United States, the Office will not cancel the entire extension of protection, but will instead delete the cancelled goods or services from the extension of protection. The holder of the extension of protection may request transformation only as to the cancelled goods or services.

The requirements for transformation are set forth in § 7.31(a). The holder of an international registration must file the request for transformation through TEAS within three months of the date of cancellation of the international registration. The request must include an application filing fee for at least one class of goods and/or services.

Under § 7.31(b), if a request for transformation contains all the elements in § 7.31(a), the cancelled extension of protection to the United States will be transformed into an application under sections 1 and/or 44 of the Act. The application will be accorded the same filing date and same priority (if any) as the cancelled extension of protection to the United States. The application resulting from the transformation will be examined as a new application under part 2 and, if approved for publication, published for opposition. The application must meet all the requirements of the Act and rules for an application under section 1 and/or section 44 of the Act, as appropriate.

If the holder does not meet the requirements of § 7.31(a), the Office will not process the request for transformation.

Maintaining an Extension of Protection to the United States

Section 71 of the Act and § 7.36 require the holder of an international registration with a registered extension of protection to the United States to file an affidavit or declaration of use in

commerce or excusable nonuse during the following time periods: (1) Between the fifth and sixth year after the date of registration in the United States; and (2) within the six-month period before the end of every ten-year period after the date of registration in the United States, or upon payment of a grace period surcharge, within the three-month grace period immediately following.

There is no requirement in the MPIA that the holder of a registered extension of protection to the United States renew the extension of protection in the Office under section 9 of the Act. Renewal of international registrations is governed by Article 7 of the Madrid Protocol and Rules 29–31 of the Common Regulations. The term of an international registration is ten years, and it may be renewed for ten years upon payment of the renewal fee.

Under § 7.41, renewal of an international registration and its extension of protection to the United States must be made directly with the IB. A request for renewal of an international registration cannot be submitted through the Office. If an international registration is not renewed at the IB, the registration will lapse, and the IB will notify the Office. Pursuant to section 70(b) of the Act, the Office will cancel the corresponding extension of protection to the United States.

Comments to Part 7 Rules

Comment: One comment voiced a concern that people who reside in the West will be disadvantaged by the Office's adherence to Eastern Time for according date and time of receipt of correspondence under § 7.4.

Response: The Office currently uses Eastern Time to accord a date and time of receipt to trademark-related correspondence, even when documents are submitted by customers on the West Coast and overseas. Under the current practice, the Office is able to consistently accord a receipt date to the thousands of documents it receives daily, without regard to the time zone in which the correspondence originated. This ensures effective and expeditious processing of incoming correspondence. Applying the same practice to correspondence related to international applications and registrations will provide continuity to the incoming correspondence process.

Comment: One comment requested an explanation of the Office's fees for transmitting IB filings submitted electronically by applicants and the associated burden on the Office in comparison with the fees and associated burden on other national trademark offices.

Response: The fees for processing IB filings under the Madrid Protocol reflect not only the ''handling fee'' but also the cost of redesigning the Office's automated systems so that it can receive documents from and transmit documents to the IB, and maintain electronic copies of documents sent to and received from the IB; the cost of reprogramming and expanding TEAS to add new forms for filings related to the Madrid Protocol; and the expense associated with establishing, staffing and operating a new business unit, the Madrid Processing Unit (MPU). Each Contracting Party sets their own transmittal fees. The Office does not provide information about other national trademark offices.

Comment: Two comments opposed mandatory electronic filing and requested that the Office provide an alternative to electronic filing.

Response: It is imperative that the Office process international applications expeditiously because the Office must certify and forward an international application meeting the requirements of § 7.11 to the IB within two months of the date of receipt in the Office in order to provide the applicant with an international registration date as of the date of receipt of the international application in the Office. Electronic filing saves the Office time in processing international applications and provides greater assurance to customers and the Office that the information contained in the electronic application is accurate. The pre-populated form takes information directly from the Office records, and the information entered by an applicant in the free text form is entered directly into the Office's automated system. The use of a completely automated system eliminates the additional time and work steps involved in scanning a paper application into electronic form and reduces the possibility of the paper application becoming lost within the Office.

Comment: Four comments requested that the Office eliminate the requirement for an address that is identical to the address in the basic application or registration.

Response: The Office has eliminated that requirement.

Comment: Two comments suggested that the Office adopt a mechanism to link the trademark automated records with the assignment automated records to avoid ownership discrepancies in the Office records.

Response: The Office has created an interface between the automated system in the Assignment Services Division of the Office and the Trademark database that will enable the Office to update ownership information in the Trademark database when an assignment of the entire interest and goodwill, a name change or a merger has been recorded in the Assignment Services Division. This change in practice will apply only to documents recorded on and after the date on which the new procedures are implemented. The Office will implement these new procedures on or before November 2, 2003. A notice with detailed guidelines will be published in the *Official Gazette* and posted on the Office's Web site prior to November 2, 2003.

Comment: One comment asked if the TEAS form will permit an international applicant to authorize some charges to a U.S. deposit account and other charges to an IB account in a single filing.

Response: The TEAS form is designed to permit an international applicant to authorize some charges to a U.S. deposit account and other charges to an IB account in a single filing.

Comment: Two comments requested that the Office treat international applications that do not meet the requirements of § 7.11(a) as informal and allow applicants an opportunity to correct any deficiencies.

Response: Setting up a docketing system for informal international applications is unnecessary and inefficient. Since an international application is filed in ''real'' time through TEAS, if required information is omitted from an international application, the applicant will immediately receive a TEAS error message. If the Office cannot certify an international application, the MPU will send an e-mail message. In either case, the applicant may immediately re-file the international application with the correct information through TEAS.

Comment: One comment suggested that § 7.14 identify the irregularities that the Office must correct under the Common Regulations.

Response: The suggestion has not been adopted. The irregularities that the Office must remedy are set forth in Rule 11(4) of the Common Regulations, and are not repeated in part 7 of these rules.

Comment: One comment requested that the Office change the applicant's deadline for submitting responses to IB notices of irregularities through TEAS from one month to seven days prior to the IB deadline.

Response: The one-month response period set forth in § 7.14(e) is a suggestion, not a deadline. Only responses to correct irregularities in classification and identification of goods and services must be submitted through the Office. Early submission is

encouraged to allow the Office sufficient time to process responses to irregularities in classification and identification of goods and/or services through the Office. Fees for correcting irregularities must be paid directly to the IB. All other responses to correct irregularities can be filed directly at the IB or submitted through the Office for forwarding to the IB. See discussion above of § 7.14.

Comment: One comment stated that the Office should be willing to assist international applicants in resolving classification or identification issues raised by the IB.

Response: The IB will propose changes to the identification and classification of goods and services in its notice of irregularities concerning goods and services. Because the final decision on classification and identification for an international application rests with the IB, the Office recommends that applicants adopt suggestions offered by the IB, if accurate.

Comment: One comment requested that the Office treat deficient requests to record an assignment or restriction (*see* §§ 7.23 and 7.24) as informal and allow the filer an opportunity to correct deficiencies within a reasonable time.

Response: Setting up a docketing system for deficient requests is unnecessary and inefficient. If the request is deficient, the Office will inform the filer of the deficiency in an e-mail message. The applicant/holder will have the opportunity to immediately re-file.

Comment: One comment stated that noting replacement of an extension of protection before registration could cause confusion as to the effect of such notice.

Response: The Office has revised § 7.28. Under Article 4bis of the Madrid Protocol and section 74 of the Act, replacement does not take effect until the extension of protection matures into a registration. Therefore, the Office will not note replacement of an extension of protection unless the mark has registered.

Comment: Two comments stated that the grace period for affidavits of use under § 7.36 should be changed from three months to six months.

Response: The grace period for filing an affidavit of use of a registered extension of protection is set forth in section 71 of the Act and will require a statutory amendment.

Amendment to Part 2 Rules

In addition to the new rules added as part 7 of 37 CFR, the Office is amending rules and adding new rules to part 2 of 37 CFR to bring the rules of practice in trademark cases into conformance with the MPIA, to set forth the requirements for examination and registration of extensions of protection to the United States, as well as proceedings before the Trademark Trial and Appeal Board relating to them, and to otherwise clarify and improve the procedures for processing trademark applications and conducting proceedings before the Trademark Trial and Appeal Board.

The Office is amending rules 2.2, 2.11, 2.17, 2.18, 2.19, 2.21, 2.33, 2.34, 2.35, 2.37, 2.47, 2.51, 2.52, 2.56, 2.65, 2.66, 2.73, 2.75, 2.84, 2.88, 2.101, 2.102, 2.104, 2.105, 2.107, 2.111, 2.112, 2.113, 2.118, 2.121, 2.123, 2.127, 2.128, 2.130, 2.131, 2.142, 2.145, 2.146, 2.151, 2.161, and 2.171; and adding rules 2.53, 2.54, and 2.126.

The Office is amending § 2.2 to add definitions of ''ESTTA'' (Electronic System for Trademark Trials and Appeals) and ''international application.''

The Office is revising § 2.11 and its heading to indicate that representation before the Office is governed by 37 CFR 10.14. It is redundant to have provisions governing representation before the Office in both parts 2 and 10.

The Office is rewording § 2.17(b) by adding a reference to § 10.14(b), and rewording § 2.17(a) and (c) by replacing ''paper'' with ''document.''

The Office is amending § 2.18 to clarify procedures for establishing a correspondence address in trademark cases. The amendment does not change current practice.

The Office is amending § 2.19(a) to clarify procedures for sending correspondence after a power of attorney is revoked, and amending § 2.19(b) to indicate that the procedures for permissive withdrawal of an attorney are governed by § 10.40.

The Office is amending § 2.21(a) to indicate that § 2.21 sets forth the minimum filing requirements only for applications under sections 1 and 44 of the Act. The filing date of an application under section 66(a) of the Act is governed by section 66(b) of the Act and § 7.26.

Section 2.33(d)(1) is amended to delete the requirement that a party who signs a trademark document electronically print, sign, date and maintain a paper copy of the electronic submission. It is burdensome and inefficient to require parties who file electronically to maintain both paper and electronic records of the filings.

The Office is also amending § 2.33 by adding paragraph (e), setting forth the requirements for a verified statement for an application under section 66(a) of the Act, and stating that the verified statement is part of the international registration on file at the IB.

The Office is removing §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv) and 2.34(a)(4)(iv), which state that an application may list more than one item of goods or more than one service, provided that the applicant has used or has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services. This is stated in §§ 2.32(a)(6), 2.33(b)(1) and 2.33(b)(2), and it is unnecessary to repeat it in § 2.34.

The Office is amending § 2.34(a)(4)(i)(A) to require that an application based on section 44(d) of the Act specify the serial number of the foreign application. This incorporates a requirement of Article 4(D)(5) of the Paris Convention, and codifies current practice, as stated in TMEP § 1003.

The Office is adding a new § 2.34(a)(5), setting forth a request for extension of protection of an international registration under section 66(a) of the Act as a fifth basis for filing a trademark application.

The Office is revising § 2.34(b) to provide that more than one basis can be claimed only in an application under section 1 or 44 of the Act, and that a basis under section 66(a) of the Act cannot be combined with any other basis.

The Office is revising § 2.35(a) to state that in an application under section 66(a) of the Act, the applicant may not add, substitute or delete a basis, unless the applicant meets the requirements for transformation under section 70(c) of the Act and § 7.31.

The Office is revising § 2.35(b) to clarify that the requirements for adding, substituting or deleting a basis apply only to applications under sections 1 and 44 of the Act. This does not change current practice.

The Office is redesignating § 2.35(c) through 2.35(h) as § 2.35(b)(3) through 2.35(b)(8).

The Office is amending § 2.37(b) to delete the requirement for a description of a mark that has color. The requirement for a description of color for marks where color is claimed as a feature of the mark is already set forth in § 2.52, and it is unnecessary to repeat the requirement in § 2.37.

The Office is amending § 2.47 to indicate that an application under section 66(a) of the Act is not eligible for registration on the Supplemental Register. Section 68(a)(4) of the Act provides that registration of an extension of protection of an international registration shall be

refused to any mark not eligible for registration on the Principal Register.

The Office is rewording § 2.51 to simplify the rule and to add a provision that, in an application under section 66(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark that appears in the international registration.

The Office is revising § 2.52 to clarify the types of drawings and format for drawings. There are two types of drawings: (1) Standard character drawings; and (2) special form drawings. Currently the rules refer to ''typed drawings.'' The Office is using the term ''standard character'' in the amended rules instead of the term ''typed'' because this is the term used for international applications under the Madrid Protocol. Section 2.52(a) sets forth the requirements for a standard character drawing, and § 2.52(b) sets forth the requirements for a special form drawing.

Section 2.52(a) permits an applicant to submit a standard character drawing, if the applicant seeks to register words, letters, and/or numbers without claim to any particular font style, size, or color, and the mark does not include a design element. Only Latin characters, Roman or Arabic numerals and common punctuation and diacritical marks may be used in a standard character drawing. The Office has created a chart of acceptable characters that may be included in a standard character drawing. The Office's standard characters set is attached as an appendix to this notice and will be published on the Office's Web site and linked to TEAS forms.

A standard character drawing does not have to display the mark in all upper case letters, but may display the mark in any font style. To avoid any confusion as to whether an applicant is seeking registration of a mark in standard characters or in the particular font style depicted in the drawing, § 2.52(a)(1) requires an applicant seeking registration of a mark in standard characters to submit a statement that the mark is in standard characters and that no claim is made to any particular font style, size, or color. If a drawing displays a mark in all capital letters or includes the wording ''typed drawing,'' the Office will treat the drawing as a standard character drawing and the examining attorney will amend the application to include a standard characters statement by Examiner's Amendment. No prior authorization from the applicant is required for this type of Examiner's Amendment. If it is unclear whether the drawing is a standard character drawing or a special form drawing, the examining attorney will require the applicant to clarify the type of drawing during examination.

Section 2.52(b) requires a special form drawing if an applicant seeks to register a design, a mark that contains color, or a mark comprised of words, letters and/or numbers in a particular font style or size.

Section 2.52(b)(1) requires that if a mark includes color, the drawing must show the mark in color and the applicant must claim color as a feature of the mark, name the color(s) and describe where the color(s) appear in the mark.

Currently, the Office does not accept color drawings. Under the current rules, to show color in a mark, an applicant must submit a black and white drawing, with a statement identifying the color(s) and describing where they appear in the mark. Alternatively, an applicant may show color by using the lining chart set forth in TMEP § 807.09(b).

Effective November 2, 2003, the Office will accept color drawings, and will require that applicants whose marks include color submit a drawing that shows color. The Office will no longer accept black and white drawings with a color claim, or drawings that are ''lined for color.'' Under § 2.52(b)(1), if color is not claimed as a feature of the mark, the applicant must submit a black and white drawing. This is consistent with the requirements for international applications under the Madrid Protocol.

The new requirements under § 2.52(b)(1) do not prohibit the use of stippling in a black and white drawing. The Office will continue to process drawings with stippling as black and white drawings. However, if shading in a mark produces gray tones or gray is a feature of the mark, the Office will process the drawing as a color drawing and require a color claim.

The Office is adding § 2.53, setting forth additional requirements for drawings filed through TEAS, and § 2.54, setting forth additional requirements for drawings submitted on paper.

Section 2.53(a) requires an applicant submitting a standard character drawing to type the mark in the appropriate field on the TEAS form or attach a digitized image of the mark that meets the requirements of § 2.53(c). If the applicant enters the mark in the appropriate text field on the TEAS form and the standard characters in the applicant's mark are all included in the Office's standard character set (*see* Appendix), the Office will create a digitized image of the mark in .jpg format and attach the image to the TEAS submission. If the applicant enters a mark that includes characters not in the Office's standard character set, an error message will appear. The applicant will then be required to attach a digitized image of the mark that meets the requirements of § 2.53(c).

Section 2.53(b) requires an applicant filing a special form drawing to attach to its TEAS submission a digitized image of the mark that meets the requirements of § 2.53(c).

Section 2.53(c) requires a digitized image of the mark that is in .jpg format and scanned at no less than 300 dots per inch and no more than 350 dots per inch with a length and width of no less than 250 pixels and no more than 944 pixels. The image must be clear and produce a high quality image when copied. These requirements are necessary to ensure that the Office database contains a clear and accurate reproduction of the mark and meets the 8 cm by 8 cm size limit that is required for an international application.

The Office is adding § 2.54, setting forth the requirements for a paper drawing. These requirements are necessary to ensure that the Office receives an image that can be scanned into its database without losing clarity.

The Office is amending § 2.56(d)(4) to require that a specimen transmitted electronically be a digitized image in .jpg format.

The Office is amending § 2.65(a) to add a statement that if a refusal or requirement is expressly limited to only certain goods and/or services and the applicant fails to file a complete response to the refusal or requirement, the application shall be abandoned only as to those particular goods and/or services. This is a change in practice. Currently, failure to respond to a refusal that pertains to fewer than all the goods and/or services, or fewer than all the classes, will result in abandonment of the entire application. *See* TMEP § 1403.05. This change in practice will result in fewer abandoned applications and comports with sections 68(c) and 69(a) of the Act, which provide that an application under section 66(a) of the Act is automatically protected with respect to any goods or services for which the Office has not timely notified the IB of a refusal.

Proposed § 2.66(a) required an applicant to file a petition to revive an abandoned application based on unintentional delay within two months of the mailing date of the notice of abandonment. The proposed rule removed § 2.66(a)(2), which provides that such a petition may be filed within two months of actual knowledge of the abandonment if the applicant did not

receive the notice of abandonment and the applicant was diligent in checking the status of the application. This change in practice was proposed to improve the accuracy and integrity of the Office database, to prevent harm to third parties who have searched Office records, and to prevent the loss of international registrations due to the abandonment of the basic application.

The strict time limits imposed by Article 5(2) of the Madrid Protocol for issuing refusals of requests for extension of protection of international registrations to the United States increase the importance of the accuracy and integrity of the Office database. Moreover, because of the dependency of an international registration on a basic application under Article 6 of the Madrid Protocol, filing a petition to revive an abandoned application that serves as the basis of an international registration, more than two months after the date of abandonment may result in the loss of the international registration. If the basic application is abandoned, and a petition to revive is not filed within two months of the mailing date of the notice of abandonment, the Office will notify the IB of the abandonment of the application. The IB will then cancel the international registration that was based on the U.S. application. Once the IB cancels an international registration, it cannot be revived, even if the basic application is revived.

However, in view of several comments objecting to the proposed amendment, the Office has reconsidered this proposed change and is not removing § 2.66(a)(2). Instead, the Office is revising § 2.66(a)(2) to require that an applicant, who files a petition to revive within two months of actual knowledge of the abandonment of the application and who did not receive a notice of abandonment of the application, must have been diligent in checking the status of the application every six months from the filing date of the application to the issuance of a registration in accordance with § 2.146(i).

The Office is not adopting proposed § 2.72(d), which would have provided that in an application under section 66(a) of the Act, the applicant could amend the description or drawing of the mark if the proposed amendment does not materially alter the mark. The Madrid Protocol and the Common Regulations do not permit the amendment of a mark in an international registration. If the holder of the international registration wants to change the mark in any way, even slightly, the holder must file a new international application. *See* the IB's *Guide to International Registration*, Para. B.II.69.02 (2002). Because an application under section 66(a) of the Act is a request to extend protection of the mark in an international registration to the United States, the Office will not permit any amendment to the mark in a section 66(a) application.

Section 2.73 sets forth the requirements for amendment of an application to recite concurrent use under section 2(d) of the Act. The Office is amending § 2.73(a) to add references to applications under sections 44 and 66(a) of the Act.

The Office is adding a new § 2.75(c), stating that in an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register. As noted above, section 68(a)(4) of the Act provides that registration of an extension of protection of an international registration shall be refused to any mark not eligible for registration on the Principal Register.

The Office is revising § 2.84(a) and (b) to add references to the new filing basis under section 66(a) of the Act. The provisions with respect to requesting jurisdiction over published section 66(a) applications are similar to those in applications under sections 1(a) and 44 of the Act. However, when deciding whether to grant requests for jurisdiction of section 66(a) applications, the Director must also consider the strict time limits for notifying the IB of a refusal of an application under section 66(a) of the Act, set forth in Article 5(2) of the Madrid Protocol and section 68(c) of the Act.

Section 2.88(i)(3) is amended to correct a cross-reference.

The Office is amending §§ 2.101(a), 2.111(a), 2.118 and 2.145(c)(4) to refer to the United States Patent and Trademark Office as Office.

The Office is amending § 2.101(b) to substitute ''person'' for ''entity'' to track the statutory language; to make the rule gender neutral; to clarify the definitions of ''attorney'' and ''other authorized representative'' by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that an opposition must be signed; and to indicate that electronic signatures are required for electronically filed oppositions.

The Office is adding a new § 2.101(b)(1) and a new § 2.101(b)(2) stating that an opposition to an application based on section 1 or 44 of the Act must be filed either on paper or electronically through ESTTA, but that an opposition to an application based on section 66(a) of the Act must be filed only through ESTTA.

The Office is revising § 2.101(d)(1) through § 2.101(d)(3) and adding new § 2.101(d)(3)(i) through § 2.101(d)(3)(iii) to indicate that the Office will not accept an opposition submitted through ESTTA that does not include fees to cover all named party opposers and all classes opposed; and that the Office will not institute an opposition proceeding if an opposition submitted on paper does not include a fee sufficient to pay for one person to oppose the registration of a mark in at least one class. Prior to instituting an opposition, the Board will no longer correspond with an opposer in an opposition submitted on paper to permit submission of additional fees or designation of party opposers and/or classes where an opposition is submitted with insufficient fees to pay for opposition by all party opposers and/or in all classes. The amended regulation explains how the Office will apply a fee accompanying a paper submission that is insufficient to cover all classes and/or to cover all party opposers. The Board will notify opposer when the opposition is instituted and will indicate in the notification the opposers and classes opposed, *i.e.*, for which the required fees were submitted.

The Office is amending § 2.102(a) to make the rule gender neutral; to clarify the definitions of ''attorney'' and ''authorized representative'' by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that a request to extend the time for filing an opposition must be signed; and to indicate that electronic signatures are required for electronically filed requests to extend the time for filing oppositions.

The Office is adding a new § 2.102(a)(1) and a new § 2.102(a)(2) stating that a written request to extend the time for filing an opposition to an application based on section 1 or 44 of the Act must be filed either on paper or electronically through ESTTA, but stating that a request to extend the time for filing an opposition to an application based on section 66(a) of the Act must be filed only through ESTTA.

The Office is revising § 2.102(c) to set out the time frames for extensions of time to oppose and to indicate that the Trademark Trial and Appeal Board will no longer extend a potential opposer's time to file an opposition beyond 180 days from the date the mark is published for opposition. The Office is adding § 2.102(c)(1), (2) and (3) to state the requirements concerning the filing of permitted requests to extend the time for filing an opposition.

The Office is removing § 2.102(d), which requires submission of extension requests in triplicate.

The Office is revising § 2.104(a) to remove the requirement that a duplicate copy of the opposition, including exhibits, be filed with an opposition.

The Office is rewording the heading for § 2.105 to specify that notification of opposition proceedings is to the parties.

The Office is revising § 2.105 to clarify the definitions of ''attorney'' and ''authorized representative'' by reference to §§ 10.1(c) and 10.14(b), respectively; and to indicate that, if no attorney or other authorized representative is appointed, notification will be sent to a party's domestic representative, or, if there is no domestic representative, notification will be sent to the party.

The Office is redesignating § 2.107 as § 2.107(a); and revising it to limit this paragraph to oppositions against an application filed under section 1 or 44 of the Act; and to incorporate in the rule the existing Board practice which prohibits an opposer in a proceeding against an application filed under section 1 or 44 of the Act from adding to the goods or services in an opposition after the period for filing the opposition has closed.

The Office is adding a new § 2.107(b) to state that pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court; except that, once filed, such opposition may not be amended to add to the goods or services opposed, or to add to the grounds for opposition. Thus, opposer may not add an entirely new ground for opposition or add an additional claimed registration to a previously stated section 2(d) ground. An opposer may make amendments to grounds asserted in the notice of opposition, for example, for clarification.

The Office is revising § 2.111(b) to substitute ''person'' for ''entity'' to track the statutory language; to make the rule gender neutral; to clarify the definitions of ''attorney'' and ''authorized representative'' by reference to §§ 10.1(c) and 10.14(b), respectively; to clarify that a petition for cancellation must be signed; and to indicate that electronic signatures are required for electronically filed petitions for cancellation.

The Office is revising § 2.111(c) to divide it into four paragraphs; to state that the Office will not accept a petition for cancellation submitted through ESTTA that does not include fees to cover all named party petitioners and all classes; that the Office will not institute a cancellation proceeding if a petition for cancellation submitted on paper does not include a fee sufficient to pay for one person for a petition for cancellation against at least one class; and that prior to instituting a cancellation proceeding, the Office will no longer correspond with the petitioner named in a petition for cancellation submitted on paper to permit submission of additional fees or designation of party petitioners and/or classes where a petition for cancellation is submitted with insufficient fees to pay for cancellation by all party petitioners and/or in all classes. The revision explains how the Office will apply a fee accompanying a paper submission that is insufficient to cover all classes and/or to cover all party petitioners.

The Office is amending § 2.112(a) to make the rule gender neutral and to remove the requirement that a duplicate copy of the petition for cancellation, including exhibits, be filed with the petition for cancellation.

The Office is rewording the heading for § 2.113 to specify that notification of cancellation proceedings is to the parties.

The Office is revising § 2.113 to divide it into paragraphs (a), (b), (c) and (d) for clarity; to clarify the definitions of ''attorney'' and ''authorized representative'' by reference to §§ 10.1(c) and 10.14(b), respectively; and to indicate that, if no attorney or other authorized representative is appointed by a party, notification will be sent to that party's domestic representative, or, if there is no domestic representative for that party, notification will be sent to the party.

The Office is amending § 2.118 to delete reference to a party residing abroad and his representative in the United States in order to clarify that when any notice sent by the Office to a registrant is returned to the Office, notice may be given by publication in the *Official Gazette,* regardless of whether that registrant resides in the United States or elsewhere.

The Office is amending § 2.121(d) to eliminate the requirement for multiple copies of a stipulated/consent motion to extend the discovery or testimony periods in view of the fact that the Board is no longer stamping copies as ''approved'' and returning the copies to the parties.

The Office is amending § 2.123(g)(1) to require that depositions be in written form, but to delete reference to specific requirements that may vary depending upon the media used for submission. Requirements for submissions are specified in § 2.126.

The Office is adding new § 2.126, entitled ''Form of submissions to the Trademark Trial and Appeal Board,'' which includes paragraphs (a) through (d). Paragraphs (a) through (c) provide that submissions may be made to the Board on paper, CD-ROM, or electronically, as permitted by the rules contained in this part or Board practice; and specify the requirements for each type of submission. Paragraph (d) specifies the requirements for making a submission to the Board that is confidential in whole or in part.

The Office is amending § 2.127(a) to delete the specifications for filing on paper a brief in support of, or response to, a motion, referring instead to § 2.126.

The Office is amending § 2.128(b) to require that briefs be in written form and to delete the specifications for filing a brief on paper, referring instead to § 2.126.

The Office is amending both the heading and the body of § 2.130 to change ''Examiner of Trademarks'' to ''trademark examining attorney.'' The Office is revising § 2.130 to provide that during an inter partes proceeding, only applications under section 1 or section 44 of the Act may be remanded, at the request of the trademark examining attorney, for consideration of facts which appear to render the mark unregistrable.

The Office is amending § 2.131 to change the term ''examiner'' to ''trademark examining attorney'' and to limit the applicability of this section to inter partes proceedings involving applications under sections 1 and 44 of the Act.

The Office is revising § 2.142(a) and (b)(2) to state that notices of appeal and briefs must be filed in written form, as prescribed in § 2.126, and to delete the specifications for filing a brief on paper.

The Office is amending § 2.145(b)(3) to indicate that notices of appeal to the U.S. Court of Appeals for the Federal Circuit should be sent to the Office of the General Counsel, with a duplicate copy addressed to the Board.

The Office is amending § 2.145(c)(3) to indicate that any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding who files a notice with the Office as provided in section 21(b) of the Act, must address that notice to the Office of the General Counsel.

The Office is amending § 2.145(c)(4) to indicate that, in order to avoid premature termination of a Board proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

The Office is amending § 2.146(c) to delete reference to a petition to revive as an example of a situation where an affidavit or declaration is required in support of a petition. This is a technical correction to the rule. Effective October 30, 1999, § 2.66 was amended to delete the requirement for an affidavit or declaration in a petition to revive based on unintentional delay. An unverified statement is sufficient. *See* notices at 64 FR 48900 (Sept. 8, 1999) and 1226 TMOG 103 (Sept. 28, 1999). However, § 2.146(c) still requires a verified statement in other situations where facts are to be proven on petition. For example, if the petition arises from the loss or misplacement of a document submitted to the Office, it should be accompanied by the affidavit or declaration of the person who mailed the document, attesting to the date of submission and identifying the document filed with the petition as a true copy of the document previously filed. TMEP § 1705.03.

The Office is amending § 2.146(i) to change the standard for a showing of due diligence for petitions in which the petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired due to the loss or mishandling of papers. Currently, the rule requires that to be considered diligent, petitioners must check the status of pending matters within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. The Office is shortening the time period from one year to six months. A showing of due diligence will require that a petitioner check the status of a pending application every six months between the filing date of the application and issuance of a registration; check the status of a registration every six months after filing an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, until the petitioner receives notice that the affidavit or renewal application has been accepted; and promptly request corrective action where necessary.

Third parties may be harmed by the removal and later reinsertion of an application or registration in the Office database. Hundreds of petitions are filed each month to reinstate applications and registrations. To minimize this problem, the Office is adopting stricter time limits for filing petitions to revive or reinstate abandoned applications and cancelled or expired registrations.

The Office is revising § 2.151 to add a reference to section 71 of the Act, which requires periodic affidavits of use or excusable nonuse to maintain a registration based on an extension of protection of an international registration.

The Office is revising § 2.161(g)(2) and adding paragraph (g)(3), stating that an audio or video cassette tape recording, CD–ROM, or a specimen in another appropriate medium may be submitted in the absence of a non-bulky specimen, and that an electronically submitted specimen must be in .jpg format. The requirement that a specimen filed through TEAS be a digitized image in .jpg format is consistent with the specimen requirement in revised § 2.56(d)(4).

The Office is adding a new § 2.171(b), stating that when ownership of a registration has changed with respect to some but not all of the goods and/or services, the registrant(s) may file a request that the registration be divided into two or more separate registrations. The new owner(s) must pay a fee for each new separate registration created by the division (child registration), and record the change of ownership in the Office.

When the IB notifies the Office of the division of an international registration resulting from a partial change of ownership of the international registration with respect to some of the goods or services in the registered extension of protection to the United States, the Office will record the partial change of ownership, divide out the assigned goods or services from the registered extension of protection (parent registration), issue an updated certificate for the parent registration and publish notice of the parent registration in the *Official Gazette.* The Office will not issue a new certificate for the child registration or publish notice of the child registration until the assignee files a request to divide under § 2.171(b), and pays the required fee.

A U.S. registration based on an application under section 1 and/or section 44 of the Act may also be divided as a result of a partial change of ownership, if the partial change of ownership is recorded in the Assignment Services Division and the assignee files a request to divide under § 2.171(b), with the required fee.

Comments to Part 2 Rules

Comment: One comment indicated that the ''relationship'' of proposed § 2.17 and § 10.14(b) appears to need clarification. Another comment asked whether the Office would accept a response in which the written authorization for the attorney was not filed with the response.

Response: The requirement for written authorization in § 2.17(b) applies only to non-lawyers. The Office is changing the language of § 2.17(b) to make this clear. It is generally not necessary for an attorney as defined in § 10.1(c) to file a power of attorney or any other special authorization in a trademark case. Under §§ 2.17(a) and (c), an attorney who appears in person or signs a document on behalf of an applicant or registrant will be accepted as the representative of the applicant or registrant. See TMEP § 602.01.

Comment: One comment suggested that ''written'' be inserted before ''notification'' in § 2.19(a).

Response: The Office has adopted the suggestion.

Comment: Two comments suggested that the Office add the requirements for a verified statement under section 66(a) to the rules, and require that the IB send a copy of the signed verified statement with the request for extension of protection to the United States.

Response: The Office has adopted the suggestion to add the requirements for a verified statement in a section 66(a) application to the rules. These requirements have been added to § 2.33(e). However, the Office will not require that the IB send a copy of the signed verified statement with the request for extension of protection to the United States.

The Office has provided the IB with wording for a declaration of a bona fide intention to use the mark in commerce. The declaration will be made part of the official IB form for international applications and subsequent designations in which the United States is designated for an extension of protection, and will remain as part of the international registration on file at the IB. The wording of the declaration and instructions for who may sign the declaration comport with the requirements of section 66(a) of the Act and § 2.33. The IB will review the required declaration as part of the request for an extension of protection to the United States. The IB will not certify and forward a request for extension of protection to the United States, if: (1) The declaration is not signed and dated; (2) there have been any changes or modifications to the declaration; or (3) the declaration is not presented on the official IB form.

Comment: One comment suggests that the Office add the wording ''on or in connection with the goods or services listed in the application,'' to § 2.34(b).

Response: The Office has adopted that suggestion.

Comment: One comment requested clarification as to whether a priority

claim for a Section 66(a) application is part of an international registration or an additional basis for filing in the Office.

Response: If a claim of priority is part of an international registration and meets the requirements of § 7.27, the priority claim is part of the application under Section 66(a), not a separate filing basis.

Comment: Three comments recommended that the Office eliminate the requirement to petition the Director to review a post-publication amendment of the basis under § 2.35(b)(2), and delegate the responsibility to trademark examining attorneys. Two of the comments suggested that republication of a mark may not be necessary in every instance.

Response: The recommendation cannot be adopted at this time. Although routinely granted, amendments to change the basis after publication require special manual and automated processing, including republication of the mark.

Comment: One comment suggests that the Office permit section 66(a) applications to register on the Supplemental Register.

Response: The suggestion cannot be adopted because the Act provides only for registration on the Principal Register. *See* section 68(a)(4) of the Act.

Comment: Three comments requested clarification of the term ''standard character'' drawing, and asked whether a ''standard character drawing'' is the equivalent of a ''typed drawing'' under current practice. One of the comments also requested that the Office delete the requirement for a statement that no claim is made to a particular font style or size.

Response: In the United States, a ''standard character drawing'' under revised § 2.52(a), is the equivalent in its effect of a ''typed drawing'' under current § 2.52(a)(1). The requirement for a statement that no claim is made to a particular font style, size, or color ensures that there is no ambiguity as to whether the applicant seeks registration of a mark in standard characters. *See* changes to § 2.52(a) discussed above.

Comment: One comment suggested that the Office make the requirement to name the colors and describe where they appear on the mark optional for applications under sections 1 and 44 of the Act.

Response: The Office has not adopted this suggestion. Applications under sections 1 and 44 of the Act are required to name the colors and describe where the colors appear in the marks under current § 2.52. Moreover, requirements for applications under sections 1 and 44 of the Act should be consistent with the requirements for section 66(a) applications, since they may serve as the basis for an international application.

Comment: One comment asked whether marks with gray tones but no claim of color will publish with gray tones or be converted to black and white.

Response: The Office will not convert drawings that contain gray tones to black and white drawings. Drawings with gray tones will be processed as color drawings. If the application does not contain a color claim, the examining attorney will inquire whether gray is a feature of the mark. If gray is a feature of the mark, the examining attorney will require a color claim, and the Office will publish the mark in color. If gray is not a feature of the mark, the examining attorney will require a black and white drawing.

Comment: Two comments opposed the requirement in § 2.53 that a digitized image of a drawing be in .jpg format. The comments suggested that the Office amend the rule to allow flexibility in accepting other digital formats as they develop.

Response: That suggestion has not been adopted. The Office will only accept .jpg format for digitized images at this time. The Office is concerned about the level of stability, uniformity and quality of images that are received and entered into the Office database. The Office currently accepts the .jpg format and has had success handling images in this format. Both the applicant and the Office can be assured that a visible image is attached to the submission because the applicant can view the image in the browser before it is transmitted to the Office. The .jpg format is user friendly and non-proprietary, and it is available to all potential applicants. The Office has not foreclosed the possibility of accepting other formats in the future, and will continue to assess image formats that are currently available and new ones as they develop.

Comment: One comment requested information as to the consequences of excluding the caption ''Drawing Page'' from the top of a paper drawing page.

Response: The Office encourages applicants to include the caption ''Drawing Page'' so that the Office can properly flag the mark when the drawing is scanned into the database. The caption is not mandatory, but its omission may delay processing of the application.

Comment: Six comments opposed the proposed amendment of § 2.66(a), to limit the time period for filing a petition to revive to two months from the mailing date of the notice of abandonment.

Response: The Office is withdrawing the proposal to remove § 2.66(a)(2). Section 2.66(a)(2) is instead amended to change the standard for a showing of due diligence in a petition to revive from one year to six months as set forth in § 2.146(i). Under § 2.146(i), as amended, an applicant will be considered diligent if the applicant checks the status of the application every six months between the filing date of the application and issuance of a registration. The modification to § 2.66(a)(2) provides recourse for applicants who are diligent in monitoring the status of the application. However, if a petition to revive an abandoned application that forms the basis of an international registration is filed more than two months after the mailing date of the notice of abandonment, it is likely that the international registration will be cancelled. A cancelled international registration will not be revived even if the basic application is revived. See discussion above of changes to § 2.66.

Comment: One comment asked if a concurrent use application or registration can be the basis of an international application.

Response: An international application submitted through the Office can be based on a concurrent use application or registration.

Comment: Three comments noted that oppositions with insufficient fees appear to be treated differently for documents filed electronically via ESTTA and those filed on paper; and requested that the rules be amended to allow for uniform treatment for notices of opposition with insufficient fees regardless of the manner in which they are filed. One of the three comments suggested that the Office implement a mechanism in ESTTA to ensure that all required fees are paid as part of the electronic filing of a notice of opposition.

Response: The language of § 2.101(d)(2) has been modified to more clearly reflect the fact that a potential opposer may not submit a notice of opposition electronically via ESTTA with an insufficient fee, *i.e.*, the sender will immediately receive an electronic message that the transmission is not possible because the fee is insufficient. To be able to transmit the electronic notice of opposition, a potential opposer filing via ESTTA may then elect to submit the correct fee for the number of parties and classes set forth in the electronic notice of opposition, or delete classes and/or parties from the

electronic notice of opposition. For a paper filing with insufficient fees, the Board will notify opposer when the opposition is instituted and will indicate in the notification the opposers and classes opposed, *i.e.*, for which the required fees were submitted. There will be no opportunity to submit additional fees for a paper filing.

Comment: Seven comments disagreed with the proposed 120-day limitation from the date of publication on extensions of time to oppose an application, noting that a longer period of time is necessary to facilitate settlement negotiations. Of these comments, four comments recommended that the 120-day limitation on extensions of time to oppose be extended to 180 days; one comment recommended that the 120-day limitation on extensions of time to oppose pertain only to applications filed under section 66(a); and one comment recommended both that the limitation on extensions of time to oppose pertain only to applications filed under section 66(a) and that the limitation be extended to 180 days.

Response: The Office has adopted the recommendation that potential opposers be permitted to extend the time for filing an opposition to up to 180 days from the date of publication. The Office has not adopted the recommendation that this limitation pertain only to section 66(a) applications. The Office encourages use of its electronic systems and does not have the resources at this time to develop an electronic opposition filing system that can handle different filing deadlines for different types of applications. Further, different opposition filing deadlines for different types of applications would be difficult for the Board to handle administratively and would be likely to confuse potential opposers. Finally, the Board will discontinue its practice of suspending a potential opposer's time to file a notice of opposition when a letter of protest or an amendment to the application has been filed. However, the Board is continuing its practice of permitting suspension of an opposition, once filed, to facilitate and encourage settlement negotiations.

Comment: Two comments expressed concern that § 2.105 is not written clearly and could be easily misconstrued. The comments recommended that § 2.105 be rewritten to clarify to whom notification will be sent in each instance.

Response: The section has been rewritten to parallel § 2.18, as appropriate, and to clarify its intent.

Comment: Three comments noted that petitions to cancel with insufficient fees for documents filed electronically via ESTTA are treated differently from those filed on paper; and requested that the rules be amended to allow for uniform treatment for petitions to cancel with insufficient fees regardless of the manner in which they are filed. One of the three comments suggested that the Office implement a mechanism in ESTTA to ensure that all sufficient fees are paid as part of the electronic filing of a petition to cancel.

Response: The language of § 2.111(c)(2) has been modified to more clearly reflect the fact that a potential cancellation petitioner may not submit a petition to cancel electronically via ESTTA with an insufficient fee. In addition to not being able to transmit the petition for cancellation via ESTTA with an insufficient fee, the sender should receive an immediate electronic message that the transmission is not possible and the reason why transmission is not possible. A potential cancellation petitioner filing via ESTTA must either submit the correct fee for the numbers of parties and classes set forth in the electronic petition to cancel, or delete classes and/or parties from the electronic petition to cancel. If a paper filing is submitted with insufficient fees for at least one party to petition for cancellation against at least one class, the Board will simply return the papers to the sender. If a paper filing is submitted with sufficient fees for at least one party to petition for cancellation against at least one class in the registration sought to be cancelled but with insufficient fees for all stated parties and/or all classes, the Board will institute the cancellation proceeding with respect to the number of parties and classes for which fees have been submitted, according to § 2.111(b)(3), and send notification of the petition for cancellation to the parties. The notification will list only the parties and classes for which the required fees were submitted.

Comment: Two comments expressed concern that § 2.113(a) is not written clearly and could be easily misconstrued. The comments recommended that § 2.113(a) be rewritten to clarify to whom notification will be sent in each instance.

Response: The section has been rewritten to parallel § 2.18, as appropriate, and to clarify its intent. Sections 2.113(b), (c) and (d) have been relabeled accordingly.

Comment: One comment pertaining to § 2.118 recommended that all correspondence be sent to the correspondence address of record.

Response: This recommendation has not been adopted. In relation to § 2.118, this is essentially a recommendation to send notification of a petition to cancel to the attorney of record during the prosecution of an application that subsequently registered and is now the subject of a petition for cancellation, rather than sending such notification directly to respondent. The practice under the existing rule, and this provision has not been changed by this regulation, is for the Office to correspond directly with the registrant until notified otherwise by the registrant. The Office considers the appointment of an attorney to prosecute the application to lapse once the registration issues. The Board will send the notification to the registrant of record in the Office at the registrant's address of record, or if registrant is located outside the United States and a domestic representative is of record, to the registrant at the address of the domestic representative.

Comment: One comment recommended that §12.126(a)(4) permit paper submissions to the Board to be bound or fastened if the contents can be easily separated. The comment expressed concern that after scanning, the papers will not be replaced in the file in their original order.

Response: This recommendation has not been adopted. All paper submissions are scanned electronically into the Board's Trademark Trials and Appeals Information System (TTABIS). When the papers are scanned, the Board's scanning equipment keeps pages in their original order throughout the scanning process. Where papers are filed with pages simply clipped together, the scanning process has not been adversely affected. On the other hand, removing staples or binding prior to scanning has been difficult and time-consuming, especially where papers have been bound by machine. Moreover, disassembling stapled or bound papers can damage pages, resulting in misfeeds to the scanning equipment and increasing the likelihood that pages will become disordered during scanning.

Comment: One comment recommended, with respect to § 2.127(a) regarding motions in inter partes proceedings at the Board, that, rather than retaining discretion to consider reply briefs, the Board should consider all reply briefs; and reduce the time for filing a reply brief, if a reply brief is filed, from fifteen to ten days from the date of service of a brief in response to the motion.

Response: This recommendation was not accepted. The recommendation to consider all reply briefs, including reply briefs that improperly address matters outside a proper response to statements

in the brief responding to the motion, would be burdensome. Therefore, the Board will retain its discretion to consider reply briefs with respect to motions. There is no reason stated for the recommendation to shorten the time for filing a reply brief; and, at this time, the Board considers the existing fifteen-day period for filing a reply brief to be reasonable.

Comment: Four comments opposed the proposal to shorten the due diligence standard from one year to six months in § 2.146(i).

Response: The Office's electronic systems for records are readily available over the Internet 24 hours a day, seven days a week. Applicants and registrants have immediate and free access to information concerning their applications and registrations. An applicant or registrant can check the status of a pending application or registration using the TARR (Trademark Application Registration Retrieval) database. If the application is newly filed, applicant can search TESS (Trademark Electronic Search System) to see if the mark was loaded into the Office's automated database. Moreover, allegations of use under section 1 of the Act, responses to Office actions, changes to correspondence address and affidavits of use under section 8 of the Act and renewal applications under section 9 of the Act can be filed through TEAS.

In most cases, the Office will take action on filings related to a trademark application or registration within six months of receipt of the correspondence for which action is expected. Therefore, it is reasonable to require applicants and registrants to check the status of their application or registration at least twice a year until a final outcome (that is, registration for a pending application or notice of acceptance of an affidavit under section 8 of the Act or grant of renewal under section 9 of the Act) is reached. By monitoring the application or registration every six months, an applicant or registrant can take corrective action more quickly if the Office did not receive applicant's or registrant's correspondence or if correspondence sent by the Office was not received.

Rule Making Requirements

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined not to be significant for purposes of Executive Order 12866.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The main purpose of the rule change is to implement legislation that provides an additional means for filing trademark applications. Additionally, the rules provide for some technical and other changes that will simplify the trademark application process. Hence, the rules merely provide all applicants for trademark registration, including small businesses, with additional benefits.

Paperwork Reduction Act: The final rules are in conformity with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to nor shall a 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.

This final rule contains collections of information requirements subject to the PRA. This rule adds provisions allowing parties to (1) file applications for international trademark registration with the IB through the Office; (2) file subsequent designations with the IB through the Office; (3) file responses to notices of irregularities in international applications issued by the IB through the Office; (4) request the Office to note in its records that a registered extension of protection of an international registration to the United States replaces a previously issued U.S. registration; (5) file requests to record assignments or restrictions of a holder's right to dispose of an international registration, or the release of such a restriction, with the IB through the Office; and (6) file a request that the Office transform an extension of protection that was cancelled by the IB into an application for registration in the United States under section 1 or section 44 of the Act. Additionally, the rule sets forth requirements for submitting an affidavit of continued use or excusable nonuse under section 71 of the Act and discusses changes in the information required from the public to file notices of opposition, petitions to cancel, and requests for extensions of time to oppose.

An information collection package supporting the changes to the above information requirements, as set forth in this rule, has been approved by the Office of Management and Budget under 0651–0051. Previously, a separate information package, 0651–0040, was submitted in support of oppositions, requests for extensions of time to file oppositions, and petitions to cancel. The public reporting burden is estimated to average as follows: Fifteen minutes for international trademark applications; three minutes for subsequent designations; ten minutes to respond to notices of irregularities issued by the IB in connection with international applications; two minutes to request that the Office replace a United States registration with a subsequently registered extension of protection to the United States; five minutes for a request to record an assignment or restriction of a holder's right to dispose of an international registration, or the release of such a restriction; five minutes for a request that the Office transform a cancelled extension of protection into an application for registration under section 1 or 44 of the Act; fourteen minutes for an affidavit of continued use or excusable nonuse under section 71 of the Act; ten minutes to forty-five minutes for notices of opposition and petitions to cancel, depending on the particular circumstances; and ten minutes for requests for extensions of time to oppose. These time 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. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency, (2) the accuracy of the agency's estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information to respondents.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3514 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503 (Attn: USPTO Desk Officer).

Comment: One comment asked for an explanation for the time estimates and stated that the time periods for filing electronically should be increased to

account for documents filed by attorneys where the signature of an applicant or registrant must be obtained or a specimen that must be attached to the electronic submission is not scanned according to Office requirements prior to filing the document.

Response: The estimates given are meant to describe the overall average of time expended by all filers. The Office recognizes that the time parties expend in preparing submissions may vary, depending on the particular circumstances. However, the Office is confident that the estimates are reasonable descriptions of the average time expended by all filers.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

■ For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Office is amending part 2 and adding part 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Amend § 2.2 to add new paragraphs (g) and (h) to read as follows:

§ 2.2 Definitions.

* * * * *

(g) The acronym *ESTTA* means the Electronic System for Trademark Trials and Appeals, available at *www.uspto.gov*.

(h) The term *international application* means an application for international registration that is filed under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

■ 3. Revise § 2.11 to read as follows:

§ 2.11 Representation before the Office.

Representation before the Office is governed by § 10.14 of this chapter. The Office cannot aid in the selection of an attorney.

■ 4. Amend § 2.17 by revising paragraphs (a), (b) and (c) to read as follows:

§ 2.17 Recognition for representation.

(a) When an attorney as defined in § 10.1(c) of this chapter acting in a representative capacity appears in person or signs a document in practice before the United States Patent and Trademark Office in a trademark case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that, under the provisions of § 10.14 and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. Further proof of authority to act in a representative capacity may be required.

(b) Before any non-lawyer, as specified in § 10.14(b) of this chapter, will be allowed to take action of any kind with respect to an application, registration or proceeding, a written authorization from the applicant, registrant, party to the proceeding, or other person entitled to prosecute such application or proceeding must be filed.

(c) To be recognized as a representative, an attorney as defined in § 10.1(c) of this chapter may file a power of attorney, appear in person, or sign a document on behalf of an applicant or registrant that is filed with the Office in a trademark case.

* * * * *

■ 5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

(a) If documents are transmitted by an attorney, or a written power of attorney is filed, the Office will send correspondence to the attorney transmitting the documents, or to the attorney designated in the power of attorney, provided that the attorney is an attorney as defined in § 10.1(c) of this chapter.

(b) The Office will not undertake double correspondence. If two or more attorneys appear or sign a document, the Office's reply will be sent to the address already established in the record until the applicant, registrant or party, or its duly appointed attorney, requests in writing that correspondence be sent to another address.

(c) If an application, registration or proceeding is not being prosecuted by an attorney but a domestic representative has been appointed, the Office will send correspondence to the domestic representative, unless the applicant, registrant or party designates in writing another correspondence address.

(d) If the application, registration or proceeding is not being prosecuted by an attorney and no domestic representative has been appointed, the Office will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party designates in writing another correspondence address.

■ 6. Revise § 2.19 to read as follows:

§ 2.19 Revocation of power of attorney; withdrawal.

(a) Authority to represent an applicant, registrant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon written notification to the Director; and when it is revoked, the Office will communicate directly with the applicant, registrant or party to the proceeding, or with the new attorney or domestic representative if one has been appointed. The Office will notify the person affected of the revocation of his or her authorization.

(b) If the requirements of § 10.40 of this chapter are met, an attorney authorized under § 10.14 to represent an applicant, registrant or party in a trademark case may withdraw upon application to and approval by the Director.

■ 7. Amend § 2.21 by revising paragraph (a), introductory text, to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application under section 1 or section 44 of the Act that contains all of the following:

* * * * *

■ 8. Amend § 2.33 by revising paragraph (d)(1) and adding a new paragraph (e) to read as follows:

§ 2.33 Verified statement.

* * * * *

(d) * * *

(1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; or

* * * * *

(e) In an application under section 66(a) of the Act, the verified statement is part of the international registration on file at the International Bureau. The verified statement must allege that:

(1) The applicant/holder has a bona fide intention to use the mark in commerce that the United States Congress can regulate on or in connection with the goods/services identified in the international application/subsequent designation;

(2) The signatory is properly authorized to execute this declaration on behalf of the applicant/holder;

(3) The signatory believes the applicant/holder to be entitled to use the mark in commerce that the United States Congress can regulate on or in connection with the goods/services

identified in the international application/registration; and

(4) To the best of his/her knowledge and belief, no other person, firm, corporation, association, or other legal entity has the right to use the mark in commerce that the United States Congress can regulate, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, firm, corporation, association, or other legal entity, to cause confusion, or to cause mistake, or to deceive.

■ 9. Amend § 2.34 as follows:

■ a. By removing paragraphs (a)(1)(v), (a)(3)(iv), and (a)(4)(iv);

■ b. By revising paragraphs (a), introductory text, (a)(2), (a)(4)(i)(A), and (b); and

■ c. By adding new paragraph (a)(5).

§ 2.34 The revisions and addition read as follows: Bases for filing.

(a) The application must include one or more of the following five filing bases:

* * * * *

(2) *Intent-to-use under section 1(b) of the Act.* In an application under section 1(b) of the Act, the applicant must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.

* * * * *

(4) * * *

(i) * * *

(A) Specify the filing date, serial number and country of the first regularly filed foreign application; or

* * * * *

(5) *Extension of protection of an international registration under section 66(a) of the Act.* In an application under section 66(a) of the Act, the international application or subsequent designation requesting an extension of protection to the United States must contain a signed declaration that meets the requirements of § 2.33.

(b)(1) In an application under section 1 or section 44 of the Act, an applicant may claim more than one basis, provided the applicant satisfies all requirements for the bases claimed. However, the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) In an application under section 1 or section 44 of the Act, if an applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(3) A basis under section 66(a) of the Act cannot be combined with any other basis.

* * * * *

■ 10. Revise § 2.35 to read as follows:

§ 2.35 Adding, deleting, or substituting bases.

(a) In an application under section 66(a) of the Act, an applicant may not add, substitute or delete a basis, unless the applicant meets the requirements for transformation under section 70(c) of the Act and § 7.31 of this chapter.

(b) In an application under section 1 or section 44 of the Act:

(1) Before publication for opposition, an applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(2) After publication, an applicant may add or substitute a basis in an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board, but only with the express permission of the Director, after consideration on petition. Republication will be required. The amendment of an application that is the subject of an *inter partes* proceeding before the Board is governed by § 2.133(a).

(3) When an applicant substitutes one basis for another, the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record, and the application will retain the original filing date, including a priority filing date under section 44(d), if appropriate.

(4) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(5) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(6) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(7) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(8) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

■ 11. Revise § 2.37 to read as follows:

§ 2.37 Description of mark.

A description of the mark may be included in the application and must be included if required by the trademark examining attorney.

■ 12. Amend § 2.47 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding a new paragraph (c) to read as follows:

§ 2.47 Supplemental Register.

* * * * *

(c) An application under section 66(a) of the Act is not eligible for registration on the Supplemental Register.

* * * * *

■ 13. Revise § 2.51 to read as follows:

§ 2.51 Drawing required.

(a) In an application under section 1(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.

(b) In an application under section 1(b) of the Act, the drawing of the mark must be a substantially exact representation of the mark as intended to be used on or in connection with the goods and/or services specified in the application, and once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the mark must be a substantially exact representation of the mark as used on or in connection with the goods and/or services.

(c) In an application under section 44 of the Act, the drawing of the mark must be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the applicant's country of origin.

(d) In an application under section 66(a) of the Act, the drawing of the mark must be a substantially exact representation of the mark as it appears in the international registration.

■ 14. Revise § 2.52 to read as follows:

§ 2.52 Types of drawings and format for drawings.

A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark

when the application is filed. There are two types of drawings:

(a) *Standard character (typed) drawing.* Applicants who seek to register words, letters, numbers, or any combination thereof without claim to any particular font style, size, or color must submit a standard character drawing that shows the mark in black on a white background. An applicant may submit a standard character drawing if:

(1) The application includes a statement that the mark is in standard characters and no claim is made to any particular font style, size, or color;

(2) The mark does not include a design element;

(3) All letters and words in the mark are depicted in Latin characters;

(4) All numerals in the mark are depicted in Roman or Arabic numerals; and

(5) The mark includes only common punctuation or diacritical marks.

(b) *Special form drawing.* Applicants who seek to register a mark that includes a two or three-dimensional design; color; and/or words, letters, or numbers or the combination thereof in a particular font style or size must submit a special form drawing. The drawing must show the mark in black on a white background, unless the mark includes color.

(1) *Color marks.* If the mark includes color, the drawing must show the mark in color, and the applicant must name the color(s), describe where the color(s) appear on the mark, and submit a claim that the color(s) is a feature of the mark.

(2) *Three dimensional marks.* If the mark has three-dimensional features, the drawing must depict a single rendition of the mark, and the applicant must indicate that the mark is three-dimensional.

(3) *Motion marks.* If the mark has motion, the drawing may depict a single point in the movement, or the drawing may depict up to five freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also describe the mark.

(4) *Broken lines to show placement.* If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must describe the mark and explain the purpose of the broken lines.

(5) *Description of mark.* If a drawing cannot adequately depict all significant features of the mark, the applicant must also describe the mark.

(c) *TEAS drawings.* A drawing filed through TEAS must meet the requirements of § 2.53.

(d) *Paper drawings.* A paper drawing must meet the requirements of § 2.54.

(e) *Sound, scent, and non-visual marks.* An applicant is not required to submit a drawing if the mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed description of the mark.

■ 15. Add § 2.53 to read as follows:

§ 2.53 Requirements for drawings filed through the TEAS.

The drawing must meet the requirements of § 2.52. In addition, in a TEAS submission, the drawing must meet the following requirements:

(a) *Standard character drawings:* If an applicant is filing a standard character drawing, the applicant must enter the mark in the appropriate field or attach a digitized image of the mark to the TEAS submission that meets the requirements of paragraph (c) of this section.

(b) *Special form drawings:* If an applicant is filing a special form drawing, the applicant must attach a digitized image of the mark to the TEAS submission that meets the requirements of paragraph (c) of this section.

(c) *Requirements for digitized image:* The image must be in .jpg format and scanned at no less than 300 dots per inch and no more than 350 dots per inch with a length and width of no less than 250 pixels and no more than 944 pixels. All lines must be clean, sharp and solid, not fine or crowded, and produce a high quality image when copied.

■ 16. Add § 2.54 to read as follows:

§ 2.54 Requirements for drawings submitted on paper.

The drawing must meet the requirements of § 2.52. In addition, in a paper submission, the drawing should:

(a) Be on non-shiny white paper that is separate from the application;

(b) Be on paper that is 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide;

(c) Include the caption ''DRAWING PAGE'' at the top of the drawing beginning one inch (2.5 cm.) from the top edge; and

(d) Depict the mark in black ink, or in color if color is claimed as a feature of the mark.

(e) Drawings must be typed or made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.

■ 17. Amend § 2.56 by revising paragraph (d)(4) to read as follows:

§ 2.56 Specimens.

* * * * *

(d) * * *

(4) For a TEAS submission, the specimen must be a digitized image in .jpg format.

■ 18. Amend § 2.65 by revising paragraph (a) to read as follows:

§ 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed abandoned unless the refusal or requirement is expressly limited to only certain goods and/or services. If the refusal or requirement is expressly limited to only certain goods and/or services, the application will be abandoned only as to those particular goods and/or services. A timely petition to the Director pursuant to §§ 2.63(b) and 2.146, if appropriate, is a response that avoids abandonment of an application.

* * * * *

■ 19. Amend § 2.66 by revising paragraph (a)(2) to read as follows:

§ 2.66 Revival of abandoned applications.

(a) * * *

(2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application every six months in accordance with § 2.146(i).

* * * * *

■ 20. Amend § 2.73 by revising paragraph (a) to read as follows:

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a), section 44, or section 66(a) of the Act may be amended to an application for concurrent use registration, provided the application as amended satisfies the

requirements of § 2.42. The trademark examining attorney will determine whether the application, as amended, is acceptable.

* * * * *

■ 21. Amend § 2.75 by adding a new paragraph (c) to read as follows:

§ 2.75 Amendment to change application to different register.

* * * * *

(c) In an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register.

■ 22. Revise § 2.84 to read as follows:

§ 2.84 Jurisdiction over published applications.

(a) The trademark examining attorney may exercise jurisdiction over an application up to the date the mark is published in the *Official Gazette.* After publication of an application under section 1(a), 44 or 66(a) of the Act, the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the trademark examining attorney may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application.

(b) After publication, but before the certificate of registration in an application under section 1(a), 44 or 66(a) of the Act is printed, or before the notice of allowance in an application under section 1(b) of the Act is printed, an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the trademark examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

■ 23. Amend § 2.88 by revising paragraph (i)(3) to read as follows:

§ 2.88 Filing statement of use after notice of allowance

* * * * *

(i) * * *

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with § 2.71(a).

* * * * *

■ 24. Revise § 2.101 to read as follows:

§ 2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing a timely opposition, together with the required fee, in the Office.

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, but must be signed by the opposer or the opposer's attorney, as specified in § 10.1(c) of this chapter, or other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c)(1)(iii) are required for oppositions submitted electronically under paragraphs (b)(1) or (2) of this section.

(1) An opposition to an application based on section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) An opposition to an application based on section 66(a) of the Act must be filed through ESTTA.

(c) The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition.

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (*see* § 2.6).

(2) An otherwise timely opposition will not be accepted via ESTTA unless the opposition is accompanied by a fee that is sufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition.

(3) If an otherwise timely opposition is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the opposition is accompanied by no fee or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, the opposition will be refused.

(ii) If the opposition is accompanied by fees sufficient to pay for one person to oppose registration in at least one class, but fees are insufficient to oppose registration in all the classes in the application, and the particular class or classes against which the opposition is filed is not specified, the opposition will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the application for which sufficient fees have been submitted.

(iii) If persons are joined as party opposers, each must submit a fee for each class for which opposition is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class, but are insufficient for each named party opposer, the first-named party will be presumed to be the party opposer. Additional parties will be deemed to be party opposers only to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as party opposers against a multiple class application, the fees submitted are insufficient, and no specification of opposers and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named opposer against as many of the classes in the application as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the opposition against the classes in the application in ascending numerical order.

(4) The filing date of an opposition is the date of receipt in the Office of the opposition together with the required fee.

■ 25. Revise § 2.102 to read as follows:

§ 2.102 Extension of time for filing an opposition.

(a) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file in the Office a written request, addressed to the Trademark Trial and Appeal Board, to extend the time for filing an opposition. The written request need not be verified, but must be signed by the potential opposer or by the potential opposer's attorney, as specified in § 10.1(c) of this chapter, or authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c)(1)(iii) are required for electronically filed extension requests.

(1) A written request to extend the time for filing an opposition to an application filed under section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) A written request to extend the time for filing an opposition to an

application filed under section 66(a) of the Act must be filed through ESTTA.

(b) A written request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted. An opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

(c) The time for filing an opposition shall not be extended beyond 180 days from the date of publication. Any request to extend the time for filing an opposition must be filed before thirty days have expired from the date of publication or before the expiration of a previously granted extension of time, as appropriate. Requests to extend the time for filing an opposition must be filed as follows:

(1) A person may file a first request for either a thirty-day extension of time, which will be granted upon request, or a ninety-day extension of time, which will be granted only for good cause shown.

(2) If a person was granted a thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown.

(3) After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days. The Board will grant this request only upon written consent or stipulation signed by the applicant or its authorized representative, or a written request by the potential opposer or its authorized representative stating that the applicant or its authorized representative has consented to the request, or a showing of extraordinary circumstances. No further extensions of time to file an opposition will be granted under any circumstances.

■ 26. Revise § 2.104(a) to read as follows:

§ 2.104 Contents of opposition.

(a) The opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for opposition.

* * * * *

■ 27. Revise § 2.105 to read as follows:

§ 2.105 Notification to parties of opposition proceeding(s).

(a) When an opposition in proper form has been filed and the correct fee has been submitted, the Trademark Trial and Appeal Board shall prepare a notification, which shall identify the title and number of the proceeding and the application involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed.

(b) The Board shall forward a copy of the notification to opposer, as follows:

(1) If the opposition is transmitted by an attorney, or a written power of attorney is filed, the Board will send the notification to the attorney transmitting the opposition or to the attorney designated in the power of attorney, provided that the person is an ''attorney'' as defined in § 10.1(c) of this chapter.

(2) If opposer is not represented by an attorney in the opposition, but opposer has appointed a domestic representative, the Board will send the notification to the domestic representative, unless opposer designates in writing another correspondence address.

(3) If opposer is not represented by an attorney in the opposition, and no domestic representative has been appointed, the Board will send the notification directly to opposer, unless opposer designates in writing another correspondence address.

(c) The Board shall forward a copy of the opposition and any exhibits with a copy of the notification to applicant, as follows:

(1) If the opposed application contains a clear indication that the application is being prosecuted by an attorney, as defined in § 10.1(c) of this chapter, the Board shall send the documents described in this section to applicant's attorney.

(2) If the opposed application is not being prosecuted by an attorney but a domestic representative has been appointed, the Board will send the documents described in this section to the domestic representative, unless applicant designates in writing another correspondence address.

(3) If the opposed application is not being prosecuted by an attorney, and no domestic representative has been appointed, the Board will send the documents described in this section directly to applicant, unless applicant designates in writing another correspondence address.

■ 28. Revise § 2.107 to read as follows:

§ 2.107 Amendment of pleadings in an opposition proceeding.

(a) Pleadings in an opposition proceeding against an application filed under section 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, after the close of the time period for filing an opposition including any extension of time for filing an opposition, an opposition may not be amended to add to the goods or services opposed.

(b) Pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, once filed, the opposition may not be amended to add to the grounds for opposition or to add to the goods or services subject to opposition.

■ 29. Revise § 2.111 to read as follows:

§ 2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by the filing of a timely petition for cancellation, together with the required fee, in the Office.

(b) Any person who believes that he, she or it is or will be damaged by a registration may file a petition, addressed to the Trademark Trial and Appeal Board, for cancellation of the registration in whole or in part. The petition for cancellation need not be verified, but must be signed by the petitioner or the petitioner's attorney, as specified in § 10.1(c) of this chapter, or other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c)(1)(iii) are required for petitions submitted electronically via ESTTA. The petition for cancellation may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14(3) or (5) of the Act. In all other cases, the petition for cancellation and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

(c)(1) The petition for cancellation must be accompanied by the required fee for each party joined as petitioner for each class in the registration for which cancellation is sought (*see* § 2.6).

(2) An otherwise timely petition for cancellation will not be accepted via ESTTA unless the petition for

cancellation is accompanied by a fee that is sufficient to pay in full for each named party petitioner to petition for cancellation of the registration of a mark in each class specified in the petition for cancellation.

(3) If an otherwise timely petition for cancellation is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the petition for cancellation is accompanied by no fee or a fee insufficient to pay for one person to petition for cancellation against at least one class in the registration, the petition for cancellation will be refused.

(ii) If the petition for cancellation is accompanied by fees sufficient to pay for one person to petition for cancellation against at least one class in the registration, but fees are insufficient for a petition for cancellation against all the classes in the registration, and the particular class or classes against which the petition for cancellation is filed is not specified, the petition for cancellation will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the registration for which sufficient fees have been submitted.

(iii) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are sufficient to pay for one person to petition for cancellation of the registration in at least one class but are insufficient for each named party petitioner, the first-named party will be presumed to be the party petitioner. Additional parties will be deemed to be party petitioners only to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a multiple class registration, the fees submitted are insufficient, and no specification of parties and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the cancellation against the classes in the registration in ascending numerical order.

(4) The filing date of a petition for cancellation is the date of receipt in the Office of the petition for cancellation together with the required fee.

■ 30. Revise § 2.112 to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition for cancellation must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the ground for cancellation, and indicate, to the best of petitioner's knowledge, the name and address of the current owner of the registration.

(b) When appropriate, petitions for cancellation of different registrations owned by the same party may be joined in a consolidated petition for cancellation. The required fee must be included for each party joined as a petitioner for each class sought to be cancelled in each registration against which the petition for cancellation is filed.

■ 31. Revise § 2.113 to read as follows:

§ 2.113 Notification to parties of cancellation proceeding.

(a) When a petition for cancellation has been filed in proper form (see §§ 2.111 and 2.112), the Trademark Trial and Appeal Board shall prepare a notification which shall identify the title and number of the proceeding and the registration(s) involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed.

(b) The Board shall forward a copy of the notification to petitioner, as follows:

(1) If the petition for cancellation is transmitted by an attorney, or a written power of attorney is filed, the Board will send the notification to the attorney transmitting the petition for cancellation or to the attorney designated in the power of attorney, provided that person is an ''attorney'' as defined in § 10.1(c) of this chapter.

(2) If petitioner is not represented by an attorney in the cancellation proceeding, but petitioner has appointed a domestic representative, the Board will send the notification to the domestic representative, unless petitioner designates in writing another correspondence address.

(3) If petitioner is not represented by an attorney in the cancellation proceeding, and no domestic representative has been appointed, the Board will send the notification directly to petitioner, unless petitioner designates in writing another correspondence address.

(c) The Board shall forward a copy of the petition for cancellation and any exhibits with a copy of the notification to the respondent (*see* § 2.118). The respondent shall be the party shown by the records of the Office to be the current owner of the registration(s) sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration(s).

(d) When the party alleged by the petitioner, pursuant to § 2.112(a), as the current owner of the registration(s) is not the record owner, a courtesy copy of the petition for cancellation shall be forwarded with a copy of the notification to the alleged current owner. The alleged current owner may file a motion to be joined or substituted as respondent.

(e) If the petition for cancellation is found to be defective as to form, the party filing the petition for cancellation shall be advised and allowed reasonable time for correcting the informality.

■ 32. Revise § 2.118 to read as follows:

§ 2.118 Undelivered Office notices.

When a notice sent by the Office to any registrant is returned to the Office undelivered, additional notice may be given by publication in the Official Gazette for the period of time prescribed by the Director.

■ 33. Amend § 2.121 by revising paragraph (d) to read as follows:

§ 2.121 Assignment of times for taking testimony.

* * * * *

(d) When parties stipulate to the rescheduling of testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board.

■ 34. Amend § 2.123 by revising paragraph (g)(1) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * *

(g) *Form of deposition.* (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer.

* * * * *

■ 35. Add new § 2.126 to read as follows:

§ 2.126 Form of submissions to the Trademark Trial and Appeal Board.

(a) Submissions may be made to the Trademark Trial and Appeal Board on paper where Board practice or the rules in this part permit. A paper submission, including exhibits and depositions, must meet the following requirements:

(1) A paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet;

(2) A paper submission must be 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long, and contain no tabs or other such devices extending beyond the edges of the paper;

(3) If a paper submission contains dividers, the dividers must not have any extruding tabs or other devices, and must be on the same size and weight paper as the submission;

(4) A paper submission must not be stapled or bound;

(5) All pages of a paper submission must be numbered and exhibits shall be identified in the manner prescribed in § 2.123(g)(2);

(6) Exhibits pertaining to a paper submission must be filed on paper or CD-ROM concurrently with the paper submission, and comply with the requirements for a paper or CD–ROM submission.

(b) Submissions may be made to the Trademark Trial and Appeal Board on CD–ROM where the rules in this part or Board practice permit. A CD–ROM submission must identify the parties and case number and contain a list that clearly identifies the documents and exhibits contained thereon. This information must appear in the data contained in the CD–ROM itself, on a label affixed to the CD–ROM, and on the packaging for the CD–ROM. Text in a CD–ROM submission must be in at least 11-point type and double-spaced. A brief filed on CD–ROM must be accompanied by a single paper copy of the brief. A CD–ROM submission must be accompanied by a transmittal letter on paper that identifies the parties, the case number and the contents of the CD–ROM.

(c) Submissions may be made to the Trademark Trial and Appeal Board electronically via the Internet where the rules in this part or Board practice permit, according to the parameters established by the Board and published on the Web site of the Office. Text in an electronic submission must be in at least 11-point type and double-spaced. Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission.

(d) To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to § 2.125(e) must be submitted under a separate cover. Both the submission and its cover must be marked confidential and must identify the case number and the parties. A copy of the submission with the confidential portions redacted must be submitted.

■ 36. Amend § 2.127 by revising paragraph (a) to read as follows:

§ 2.127 Motions.

(a) Every motion must be submitted in written form and must meet the requirements prescribed in § 2.126. It shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. Except as provided in paragraph (e)(1) of this section, a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for responding to the motion remains as specified under this section, unless otherwise ordered. The Board may, in its discretion, consider a reply brief. Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within fifteen days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended. No further papers in support of or in opposition to a motion will be considered by the Board. The brief in support of a motion and the brief in response to the motion shall not exceed twenty-five pages in length, and a reply brief shall not exceed ten pages in length. Exhibits submitted in support of or in opposition to a motion shall not be deemed to be part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

* * * * *

■ 37. Amend § 2.128 by revising paragraph (b) to read as follows:

§ 2.128 Briefs at final hearing.

* * * * *

(b) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety.

■ 38. Revise § 2.130 to read as follows:

§ 2.130 New matter suggested by the trademark examining attorney.

If, while an inter partes proceeding involving an application under section 1 or 44 of the Act is pending, facts appear which, in the opinion of the trademark examining attorney, render the mark in the application unregistrable, the facts should be called to the attention of the Trademark Trial and Appeal Board. The Board may suspend the proceeding and refer the application to the trademark examining attorney for an ex parte determination of the question of registrability. A copy of the trademark examining attorney's final action will be furnished to the parties to the inter partes proceeding following the final determination of registrability by the trademark examining attorney or the Board on appeal. The Board will consider the application for such further inter partes action as may be appropriate.

■ 39. Revise § 2.131 to read as follows:

§ 2.131 Remand after decision in inter partes proceeding.

If, during an inter partes proceeding involving an application under section 1 or 44 of the Act, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon remand, the trademark examining attorney shall reexamine the application in light of the reference by the Board. If, upon reexamination, the trademark examining attorney finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

■ 40. Amend § 2.142 by revising paragraphs (a) and (b)(2) to read as follows:

§ 2.142 Time and manner of ex parte appeals.

(a) Any appeal filed under the provisions of § 2.141 must be filed within six months from the date of the final refusal or the date of the action from which the appeal is taken. An appeal is taken by filing a notice of appeal in written form, as prescribed in § 2.126, and paying the appeal fee.

(b) * * *

(2) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary.

* * * * *

■ 41. Amend § 2.145 by revising paragraphs (b)(3), (c)(3) and (c)(4) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * *

(b) * * *

(3) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel, according to part 104 of this chapter, with a duplicate copy mailed or served by hand on the Trademark Trial and Appeal Board.

(c) * * *

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Office, addressed to the Office of the General Counsel, according to part 104 of this chapter, within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119.

(4) In order to avoid premature termination of a proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

* * * * *

■ 42. Amend § 2.146 by revising paragraphs (c) and (i) to read as follows:

§ 2.146 Petitions to the Director.

* * * * *

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief that is requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in *ex parte* cases, proof in the form of affidavits or declarations in accordance with § 2.20, and any exhibits, shall accompany the petition.

* * * * *

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because papers were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

(1) During the pendency of an application, check the status of the application every six months between the filing date of the application and issuance of a registration;

(2) After registration, check the status of the registration every six months from the filing of an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, until the petitioner receives notice that the affidavit or renewal application has been accepted; and

(3) If the status check reveals that the Office has not received a document filed by the petitioner, or that the Office has issued an action or notice that the petitioner has not received, the petitioner must promptly request corrective action.

* * * * *

■ 43. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue a certificate stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of sections 8 and 71 of the Act will accompany the certificate.

■ 44. Amend § 2.161 by revising paragraph (g)(2) and adding a new paragraph (g)(3) to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

* * * * *

(g) * * *

(2) Be flat and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the record. In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD–ROM, or a specimen in another appropriate medium.

(3) Be a digitized image in .jpg format, if transmitted through TEAS.

■ 45. Revise § 2.171 to read as follows:

§ 2.171 New certificate on change of ownership.

(a) If the ownership of a registered mark changes, the assignee may request that a new certificate of registration be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Office, and the request for the new certificate must be signed by the assignee and accompanied by the fee required by § 2.6(a)(8). If available, the original certificate of registration must be submitted.

(b) When ownership of a registration has changed with respect to some, but not all, of the goods and/or services, the registrant(s) may file a request that the registration be divided into two or more separate registrations. The fee required by § 2.6(a)(8) must be paid for each new registration created by the division, and the change of ownership must be recorded in the Office.

■ 1. Add a new part 7:

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Subpart A—General Information

Sec.

7.1 Definitions of terms as used in this part.
7.2 [Reserved]
7.3 Correspondence must be in English.
7.4 Receipt of correspondence.
7.5 [Reserved]
7.6 Schedule of U.S. process fees.
7.7 Payments of fees to International Bureau.

Subpart B—International Application Originating From The United States

7.11 Requirements for international application originating from the United States.
7.12 Claim of color.
7.13 Certification of international application.

7.14 Correcting irregularities in international application.

Subpart C—Subsequent Designation Submitted Through the Office

7.21 Subsequent designation.

Subpart D—Recording Changes to International Registration

7.22 Recording changes to international registration.
7.23 Requests for recording assignments at the International Bureau.
7.24 Requests to record security interest or othe r restriction of holder's rights of disposal or release of such restriction submitted through the Office.

Subpart E—Extension of Protection to the United States

7.25 Sections of part 2 applicable to extension of protection.
7.26 Filing date of extension of protection for purposes of examination in the Office.
7.27 Priority claim of extension of protection for purposes of examination in the Office.
7.28 Replacement of U.S. registration by registered extension of protection.
7.29 Effect of replacement on U.S. registration.
7.30 Effect of cancellation or expiration of international registration.
7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.

Subpart F—Affidavit Under Section 71 of the Act for Extension of Protection to the United States

7.36 Affidavit or declaration of use in commerce or excusable nonuse required to avoid cancellation of an extension of protection to the United States.
7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.
7.38 Notice to holder of extension of protection.
7.39 Acknowledgment of receipt of affidavit or declaration of use in commerce or excusable nonuse.
7.40 Petition to Director to review refusal.

Subpart G—Renewal of International Registration and Extension of Protection

7.41 Renewal of international registration and extension of protection.

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless othe rwise noted.

Subpart A—General Information

§ 7.1 Definitions of terms as used in this part.

(a) *the Act* means the Trademark Act of 1946, 60 Stat. 427, as amended, codified in 15 U.S.C. 1051 *et seq.*

(b) *Subsequent designation* means a request for extension of protection of an international registration to a Contracting Party made after the International Bureau registers the mark.

(c) The acronym *TEAS* means the Trademark Electronic Application System available on-line through the Office's Web site at: *www.uspto.gov.*

(d) The term *Office* means the United States Patent and Trademark Office.

(e) All references to sections in this part refer to 37 Code of Federal Regulations, except as otherwise stated.

§ 7.2 [Reserved]

§ 7.3 Correspondence must be in English.

International applications and registrations, requests for extension of protection and all other related correspondence with the Office must be in English. The Office will not process correspondence that is in a language other than English.

§ 7.4 Receipt of correspondence.

Correspondence relating to international applications and registrations and requests for extension of protection submitted through TEAS will be accorded the date and time on which the complete transmission is received in the Office based on Eastern Time. Eastern Time means eastern standard time or eastern daylight time, as appropriate.

§ 7.5 [Reserved]

§ 7.6 Schedule of U.S. process fees.

(a) The Office requires the following process fees:

(1) For certifying an international application based on a single basic application or registration, per class—$100.00

(2) For certifying an international application based on more than one basic application or registration, per class—$150.00

(3) For transmitting a subsequent designation under § 7.21—$100.00

(4) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24—$100.00

(5) For filing a notice of replacement under § 7.28, per class—$100.00

(6) For filing an affidavit under § 71 of the Act, per class—$100.00

(7) Surcharge for filing an affidavit under § 71 of the Act during the grace period, per class—$100.00

(b) The fees required in paragraph (a) of this section must be paid in U.S. dollars at the time of submission of the requested action. *See* § 2.207 of this chapter for acceptable forms of payment and § 2.208 of this chapter for payments using a deposit account established in the Office.

§ 7.7 Payments of fees to International Bureau.

(a) The following fees may be paid either directly to the International Bureau or through the Office:

(1) International application fees;

(2) Subsequent designation fees; and

(3) Recording fee for an assignment of an international registration under § 7.23.

(b) The fees in paragraph (a) of this section may be paid as follows:

(1)(i) Directly to the International Bureau by debit to a current account with the International Bureau. In this case, an applicant or holder's submission to the Office must include the International Bureau account number; or

(ii) Directly to the International Bureau using any other acceptable method of payment. In this case, an applicant or holder's submission to the Office must include the International Bureau receipt number for payment of the fees; or

(2) Through the Office. Fees paid through the Office must be paid in U.S. dollars at the time of submission. See § 2.207 of this chapter for acceptable forms of payment and § 2.208 of this chapter for payments using a deposit account established in the Office.

(c) The International Bureau fee calculator may be viewed on the Web site of the World Intellectual Property Organization, currently available at: *http://www.wipo.int/madrid/en/*.

Subpart B—International Application Originating From the United States

§ 7.11 Requirements for international application originating from the United States.

(a) The Office will grant a date of receipt to an international application that is submitted through TEAS and contains all of the following:

(1) The filing date and serial number of the basic application and/or the registration date and registration number of the basic registration;

(2) The name of the international applicant that is identical to the name of the applicant or registrant as it appears in the basic application or basic registration and applicant's current address;

(3) A reproduction of the mark that is the same as the mark in the basic application and/or registration and meets the requirements of § 2.52 of this chapter. If the mark in the basic application and/or registration is depicted in black and white and the basic application or registration does not include a color claim, the reproduction of the mark in the international application must be black and white. If the mark in the basic application or registration is depicted in black and white and includes a color claim, the international application

must include both a black and white reproduction of the mark and a color reproduction of the mark. If the mark in the basic application and/or registration is depicted in color, the reproduction of the mark in the international application must be in color;

(4) A color claim as set out in § 7.12, if appropriate;

(5) A description of the mark that is the same as the description of the mark in the basic application or registration, as appropriate;

(6) An indication of the type of mark if the mark in the basic application and/or registration is a three-dimensional mark, a sound mark, a collective mark or a certification mark;

(7) A list of the goods and/or services that is identical to or narrower than the list of goods and/or services in each claimed basic application or registration and classified according to the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*;

(8) A list of the designated Contracting Parties. If the goods and/or services in the international application are not the same for each designated Contracting Party, the application must list the goods and/or services in the international application that pertain to each designated Contracting Party;

(9) The certification fee required by § 7.6, the international application fees for all classes, and the fees for all designated Contracting Parties identified in the international application (*see* § 7.7);

(10) A statement that the applicant is entitled to file an international application in the Office, specifying that applicant: Is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an applicant's address is not in the United States, the applicant must provide the address of its U.S. domicile or establishment; and

(11) An e-mail address for receipt of correspondence from the Office.

(b) For requirements for certification, *see* § 7.13.

§ 7.12 Claim of color.

(a) If color is claimed as a feature of the mark in the basic application and/or registration, the international application must include a statement that color is claimed as a feature of the mark and set forth the same name(s) of the color(s) claimed in the basic application and/or registration.

(b) If color is not claimed as a feature of the mark in the basic application and/or registration, color may not be claimed as a feature of the mark in the international application.

§ 7.13 Certification of international application.

(a) When an international application contains all the elements set forth in § 7.11(a), the Office will certify to the International Bureau that the information contained in the international application corresponds to the information contained in the basic application(s) and/or basic registration(s) at the time of certification, and will then forward the international application to the International Bureau.

(b) When an international application does not meet the requirements of § 7.11(a), the Office will not certify or forward the international application. If the international applicant paid the international application fees (see § 7.7) through the Office, the Office will refund the international fees. The Office will not refund the certification fee.

§ 7.14 Correcting irregularities in international application.

(a) *Response period.* Upon receipt of a notice of irregularities in an international application from the International Bureau, the applicant must respond to the International Bureau within the period set forth in the notice.

(b) *Classification and Identification of Goods and Services.* Responses to International Bureau notices of irregularities in the classification or identification of goods or services in an international application must be submitted through the Office for forwarding to the International Bureau. The Office will review an applicant's response to a notice of irregularities in the identification of goods or services to ensure that the response does not identify goods or services that are broader than the scope of the goods or services in the basic application or registration.

(c) *Fees.* If the International Bureau notice of irregularities requires the payment of fees, the fees for correcting irregularities in the international application must be paid directly to the International Bureau.

(d) *Other Irregularities Requiring Response from Applicant.* Except for responses to irregularities mentioned in paragraph (b) of this section and payment of fees for correcting irregularities mentioned in paragraph (c) of this section, all other responses may be submitted through the Office in accordance with § 7.14(e), or filed directly at the International Bureau. The Office will forward timely responses to the International Bureau, but will not review the responses or respond to any irregularities on behalf of the international applicant.

(e) *Procedure for response.* An international applicant submitting a response to the International Bureau through the Office must use TEAS. To be considered timely, a response must be received by the International Bureau before the end of the response period set forth in the International Bureau notice. Receipt in the Office does not fulfill this requirement. Any response submitted through the Office for forwarding to the International Bureau should be submitted as soon as possible, but at least one month before the end of the response period in the International Bureau's notice. The Office will not process any response submitted to the Office after the IB response deadline.

Subpart C—Subsequent Designation Submitted Through the Office

§ 7.21 Subsequent designation.

(a) A subsequent designation may be filed directly with the International Bureau, or, if it meets the requirements of paragraph (b) of this section, submitted through the Office.

(b) The date of receipt in the Office of a subsequent designation is the date that the subsequent designation is submitted through TEAS, if it contains all of the following:

(1) The international registration number;

(2) The serial number of the U.S. application or registration number of the U.S. registration that formed the basis of the international registration;

(3) The name and address of the holder of the international registration;

(4) A statement that the holder is entitled to file a subsequent designation in the Office, specifying that holder: Is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where a holder's address is not in the United States, the holder must provide the address of its U.S. domicile or establishment;

(5) A list of goods and/or services that is identical to or narrower than the list of goods and/or services in the international registration;

(6) A list of the designated Contracting Parties. If the goods and/or services in the subsequent designation are not the same for each designated Contracting Party, the holder must list the goods and/or services covered by the subsequent designation that pertain to each designated Contracting Party;

(7) The U.S. transmittal fee required by § 7.6 and the subsequent designation fees (*see* § 7.7); and

(8) An e-mail address for receipt of correspondence from the Office.

(c) If the subsequent designation is accorded a date of receipt, the Office will then forward the subsequent designation to the International Bureau.

(d) If the subsequent designation fails to contain all the elements set forth in paragraph (b) of this section, the Office will not forward the subsequent designation to the International Bureau. The Office will notify the holder of the reason(s). If the holder paid the subsequent designation fees (see § 7.7) through the Office, the Office will refund the subsequent designation fees. The Office will not refund the transmittal fee.

(e) Correspondence to correct any irregularities in a subsequent designation must be made directly with the International Bureau.

Subpart D—Recording Changes to International Registration

§ 7.22 Recording changes to international registration.

Except as provided in §§ 7.23 and 7.24, requests to record changes to an international registration must be filed with the International Bureau. If a request to record an assignment or restriction of a holder's right of disposal of an international registration or the release of such a restriction meets the requirements of § 7.23 or 7.24, the Office will forward the request to the International Bureau. Section 10 of the Act and part 3 of this chapter are not applicable to assignments or restrictions of international registrations.

§ 7.23 Requests for recording assignments at the International Bureau.

A request to record an assignment of an international registration may be submitted through the Office for forwarding to the International Bureau only if the assignee cannot obtain the assignor's signature for the request to record the assignment.

(a) A request to record an assignment submitted through the Office must include all of the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) The name and address of the assignee of the international registration;

(4) A statement that the assignee: Is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where an assignee's address is not in the United States, the assignee must provide the address of its U.S. domicile or establishment;

(5) A statement that the assignee could not obtain the assignor's signature for the request to record the assignment;

(6) An indication that the assignment applies to the designation to the United States;

(7) A statement that the assignment applies to all the goods and/or services in the international registration, or if less, a list of the goods and/or services in the international registration that have been assigned that pertain to the designation to the United States; and

(8) The U.S. transmittal fee required by § 7.6 and the international fee required to record the assignment (*see* § 7.7).

(b) If a request to record an assignment contains all the elements set forth in paragraph (a) of this section, the Office will forward the request to the International Bureau. Forwarding the request to the International Bureau is not a determination by the Office of the validity of the assignment or the effect that the assignment has on the title of the international registration.

(c) If the request fails to contain all the elements set forth in paragraph (a) of this section, the Office will not forward the request to the International Bureau. The Office will notify the assignee(s) of the reason(s). If the assignee paid the fees to record the assignment (*see* § 7.7) through the Office, the Office will refund the recording fee. The Office will not refund the transmittal fee.

(d) Correspondence to correct any irregularities in a request to record an assignment must be made directly with the International Bureau.

§ 7.24 Requests to record security interest or other restriction of holder's rights of disposal or release of such restriction submitted through the Office.

(a) A party who obtained a security interest or other restriction of a holder's right to dispose of an international registration, or the release of such a restriction, may submit a request to record the restriction or release through the Office for forwarding to the International Bureau only if:

(1) The restriction or release:

(i) Is the result of a court order; or

(ii) Is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal, and the signature of the holder cannot be obtained for the request to record the restriction or release;

(2) The party who obtained the restriction is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in the United States; and

(3) The restriction or release applies to the holder's right to dispose of the international registration in the United States.

(b) A request to record a restriction or the release of a restriction must be submitted by the party who obtained the restriction of the holder's right of disposal and include all the following:

(1) The international registration number;

(2) The name and address of the holder of the international registration;

(3) The name and address of the party who obtained the restriction;

(4) A statement that the party who submitted the request: Is a national of the United States; has a domicile in the United States; or has a real and effective industrial or commercial establishment in the United States. Where a party's address is not in the United States, the party must provide the address of its U.S. domicile or establishment;

(5) (i) A statement that the restriction is the result of a court order, or

(ii) Where the restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal, a statement that the signature of the holder of the international registration could not be obtained for the request to record the restriction or release of the restriction;

(6) A summary of the main facts concerning the restriction;

(7) An indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the United States; and

(8) The U.S. transmittal fee required by § 7.6.

(c) If a request to record a restriction, or the release of a restriction, contains all the elements set forth in paragraph (b) of this section, the Office will forward the request to the International Bureau. Forwarding the request to the International Bureau is not a determination by the Office of the validity of the restriction, or its release, or the effect that the restriction has on the holder's right to dispose of the international registration.

(d) If the request fails to contain all the elements set forth in paragraph (b) of this section, the Office will not forward the request. The Office will notify the party who submitted the request of the reason(s). The Office will not refund the transmittal fee.

(e) Correspondence to correct any irregularities in a request to record a restriction of a holder's right to dispose of an international registration or the release of such a restriction must be made directly with the International Bureau.

Subpart E—Extension of Protection to the United States

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.130–2.131, 2.160–2.166, 2.168, 2.172, 2.173, 2.175, and 2.181–2.186, all sections in part 2 and all sections of part 10 of this chapter apply to a request for extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless stated otherwise.

(b) The Office will refer to a request for an extension of protection to the United States as an application under section 66(a) of the Act, and references to applications and registrations in part 2 of this chapter include extensions of protection to the United States.

(c) Upon registration in the United States under section 69 of the Act, an extension of protection to the United States is referred to as a registration, a registered extension of protection, or a section 66(a) registration.

§ 7.26 Filing date of extension of protection for purposes of examination in the Office.

(a) If a request for extension of protection of an international registration to the United States is made in an international application and the request includes a declaration of a bona fide intention to use the mark in commerce as set out in § 2.33(e) of this chapter, the filing date of the extension of protection to the United States is the international registration date.

(b) If a request for extension of protection of an international registration to the United States is made in a subsequent designation and the request includes a declaration of a bona fide intention to use the mark in commerce as set out in § 2.33(e), the filing date of the extension of protection to the United States is the date that the International Bureau records the subsequent designation.

§ 7.27 Priority claim of extension of protection for purposes of examination in the Office.

An extension of protection of an international registration to the United States is entitled to a claim of priority under section 67 of the Act if:

(a) The request for extension of protection contains a claim of priority;

(b) The request for extension of protection specifies the filing date, serial number and the country of the application that forms the basis for the claim of priority; and

(c) The date of the international registration or the date of recording of the subsequent designation at the International Bureau of the request for extension of protection to the United States is not later than six months after the filing date of the application that forms the basis for the claim of priority.

§ 7.28 Replacement of U.S. registration by registered extension of protection.

(a) A registered extension of protection affords the same rights as those afforded to a previously issued U.S. registration if:

(1) Both registrations are owned by the same person and identify the same mark; and

(2) All the goods and/or services listed in the U.S. registration are also listed in the registered extension of protection.

(b) The holder of an international registration with a registered extension of protection to the United States that meets the requirements of paragraph (a) of this section may file a request to note replacement of the U.S. registration with the extension of protection. If the request contains all of the following, the Office will take note of the replacement in its automated records:

(1) The serial number or registration number of the extension of protection;

(2) The registration number of the replaced U.S. registration; and

(3) The fee required by § 7.6.

(c) If the request to note replacement is denied, the Office will notify the holder of the reason(s) for refusal.

§ 7.29 Effect of replacement on U.S. registration.

A U.S. registration that has been replaced by a registered extension of protection under section 74 of the Act and § 7.28 will remain in force, unless cancelled, expired or surrendered, as long as:

(a) The owner of the replaced U.S. registration continues to file affidavits or declarations of use in commerce or excusable nonuse under section 8 of the Act; and

(b) The replaced U.S. registration is renewed under section 9 of the Act.

§ 7.30 Effect of cancellation or expiration of international registration.

When the International Bureau notifies the Office of the cancellation or expiration of an international registration, in whole or in part, the Office shall cancel, in whole or in part, the corresponding pending or registered extension of protection to the United States. The date of cancellation of an extension of protection or relevant part shall be the date of cancellation or expiration of the corresponding international registration or relevant part.

§ 7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.

If the International Bureau cancels an international registration in whole or in part, under Article 6(4) of the Madrid Protocol, the holder of that international registration may file a request to transform the corresponding pending or registered extension of protection to the United States into an application under section 1 or 44 of the Act.

(a) The holder of the international registration must file a request for transformation through TEAS within three months of the date of cancellation of the international registration and include:

(1) The serial number or registration number of the extension of protection to the United States;

(2) The name and address of the holder of the international registration;

(3) The application filing fee for at least one class of goods or services required by § 2.6(a)(1) of this chapter; and

(4) An e-mail address for receipt of correspondence from the Office.

(b) If the request for transformation contains all the elements set forth in paragraph (a) of this section, the extension of protection shall be transformed into an application under section 1 and/or 44 of the Act and accorded the same filing date and the same priority that was accorded to the extension of protection.

(c) The application under section 1 and/or 44 of the Act that results from a transformed extension of protection will be examined under part 2 of this chapter.

(d) A request for transformation that fails to contain all the elements set forth in paragraph (a) of this section will not be accepted.

Subpart F—Affidavit Under Section 71 of the Act for Extension of Protection to the United States

§ 7.36 Affidavit or declaration of use in commerce or excusable nonuse required to avoid cancellation of an extension of protection to the United States.

(a) Subject to the provisions of section 71 of the Act, a registered extension of protection shall remain in force for the term of the international registration

upon which it is based unless the international registration expires or is cancelled under section 70 of the Act due to cancellation of the international registration by the International Bureau.

(b) During the following time periods, the holder of an international registration must file an affidavit or declaration of use or excusable nonuse, or the registered extension of protection will be cancelled under section 71 of the Act:

(1) On or after the fifth anniversary and no later than the sixth anniversary after the date of registration in the United States; and

(2) Within the six-month period preceding the end of each ten-year period after the date of registration in the United States, or the three-month grace period immediately following, with payment of the grace period surcharge required by section 71(a)(2)(B) of the Act and § 7.6.

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

A complete affidavit or declaration under section 71 of the Act must:

(a) Be filed by the holder of the international registration within the period set forth in § 7.36(b);

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter by a person properly authorized to sign on behalf of the holder, attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(b). A person who is properly authorized to sign on behalf of the holder is:

(1) A person with legal authority to bind the holder; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the holder; or

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the holder.

(c) Include the U.S. registration number;

(d)(1) Include the fee required by § 7.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 71(a)(2)(B) of the Act, include the grace period surcharge per class required by § 7.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. If the required fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 7.37(f)(2);

(2) Specify the goods or services being deleted from the registration, if the affidavit or declaration covers less than all the goods or services or less than all the classes in the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 7.37(f)(2). The specimen must meet the requirements of § 2.56 of this chapter.

§ 7.38 Notice to holder of extension of protection.

The registration certificate for an extension of protection to the United States includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 71 of the Act. However, the affidavit or declaration must be filed within the time period required by section 71 of the Act regardless of whether this notice is received.

§ 7.39 Acknowledgment of receipt of affidavit or declaration of use in commerce or excusable nonuse.

(a) The Office will issue a notice that states an affidavit or declaration of use in commerce or excusable nonuse is acceptable or if the affidavit or declaration is refused, an Office action that states the reason(s) for refusal.

(b) A Response to a refusal under paragraph (a) of this section must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 71(a) of the Act, whichever is later. The Office will cancel the extension of protection if no response is filed within this time period.

§ 7.40 Petition to Director to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Director, unless the examiner directs otherwise. *See* § 7.39(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, the holder may file a petition to the Director to review the examiner's action. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration.

(c) A decision by the Director is necessary before filing an appeal or commencing a civil action in any court.

Subpart G—Renewal of International Registration and Extension of Protection

§ 7.41 Renewal of international registration and extension of protection.

(a) Any request to renew an international registration and its extension of protection to the United States must be made at the International Bureau in accordance with Article 7 of the Madrid Protocol.

(b) A request to renew an international registration or extension of protection to the United States submitted through the Office will not be processed.

Dated: September 10, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3510–16–P

Trademark Standard Character Set

Character	DESCRIPTION
	space
!	exclamation mark
"	(double) quotation mark
#	number sign
$	dollar sign
%	percent sign
&	ampersand
'	apostrophe,
(	left parenthesis
)	right parenthesis
*	asterisk
+	plus sign
,	comma
-	minus sign, hyphen
.	period, decimal point
^	caret
/	slash, virgule, solidus
0	digit 0
1	digit 1
2	digit 2
3	digit 3
4	digit 4
5	digit 5
6	digit 6
7	digit 7
8	digit 8
9	digit 9
:	colon
;	semicolon
<	less-than sign
=	equal sign
>	greater-than sign
?	question mark
@	commercial at sign
A	capital A
B	capital B
C	capital C

Character	DESCRIPTION
D	capital D
E	capital E
F	capital F
G	capital G
H	capital H
I	capital I
J	capital J
K	capital K
L	capital L
M	capital M
N	capital N
O	capital O
P	capital P
Q	capital Q
R	capital R
S	capital S
T	capital T
U	capital U
V	capital V
W	capital W
X	capital X
Y	capital Y
Z	capital Z
[	left square bracket
\	backslash, reverse solidus
]	right square bracket
^	spacing circumflex accent
_	spacing underscore, low line,
a	small a
b	small b
c	small c
d	small d
e	small e
f	small f
g	small g
h	small h
i	small i
j	small j
k	small k
l	small l
m	small m

Character	DESCRIPTION
n	small n
o	small o
p	small p
q	small q
r	small r
s	small s
t	small t
u	small u
v	small v
w	small w
x	small x
y	small y
z	small z
{	left brace (curly bracket)
}	right brace (curly bracket)
~	tilde accent
€	Euro
‚	low left rising single quote
ƒ	small italic f, function of,
„	low left rising double quote
…	low horizontal ellipsis
‰	per thousand (mille) sign
Š	capital S caron or hacek
‹	left single angle quote mark
Œ	capital OE ligature
Ž	
‘	left single quotation mark,
’	right single quote mark
“	left double quotation mark,
”	right double quote mark
–	en dash
—	em dash
˜	small spacing tilde accent
š	small s caron or hacek
›	right single angle quote mark
œ	small oe ligature
ž	
Ÿ	capital Y dieresis or umlaut
¡	inverted exclamation mark
¢	cent sign
£	pound sterling sign

Character	DESCRIPTION
¤	general currency sign
¥	yen sign
§	section sign
¨	spacing dieresis or umlaut
ª	feminine ordinal indicator
«	left (double) angle quote
°	degree sign
±	plus-or-minus sign
´	spacing acute accent
µ	micro sign
·	middle dot, centered dot
¸	spacing cedilla
º	masculine ordinal indicator
»	right (double) angle quote
¿	inverted question mark
À	capital A grave
Á	capital A acute
Â	capital A circumflex
Ã	capital A tilde
Ä	capital A dieresis or umlaut
Å	capital A ring
Æ	capital AE ligature
Ç	capital C cedilla
È	capital E grave
É	capital E acute
Ê	capital E circumflex
Ë	capital E dieresis or umlaut
Ì	capital I grave
Í	capital I acute
Î	capital I circumflex
Ï	capital I dieresis or umlaut
Ð	capital ETH
Ñ	capital N tilde
Ò	capital O grave
Ó	capital O acute
Ô	capital O circumflex
Õ	capital O tilde
Ö	capital O dieresis or umlaut
×	multiplication sign
Ø	capital O slash
Ù	capital U grave

Character	DESCRIPTION
Ú	capital U acute
Û	capital U circumflex
Ü	capital U dieresis or umlaut
Ý	capital Y acute
Þ	capital THORN
ß	small sharp s, sz ligature
à	small a grave
á	small a acute
â	small a circumflex
ã	small a tilde
ä	small a dieresis or umlaut
å	small a ring
æ	small ae ligature
ç	small c cedilla
è	small e grave
é	small e acute
ê	small e circumflex
ë	small e dieresis or umlaut
ì	small i grave
í	small i acute
î	small i circumflex
ï	small i dieresis or umlaut
ð	small eth
ñ	small n tilde
ò	small o grave
ó	small o acute
ô	small o circumflex
õ	small o tilde
ö	small o dieresis or umlaut
÷	division sign
ø	small o slash
ù	small u grave
ú	small u acute
û	small u circumflex
ü	small u dieresis or umlaut
ý	small y acute
þ	small thorn
ÿ	small y dieresis or umlaut
Ā	Amacr - latin capital letter A with macron
ā	amacr - latin small letter a with macron
Ă	Acaron - latin capital letter A with caron (breve)

Character	DESCRIPTION
ǎ	acaron - latin small letter a with caron (breve)
Ą	Acedil - latin capital letter A with cedilla
ą	acedil - latin small letter a with cedilla
Ć	Cacute - latin capital letter C with acute
ć	cacute - latin small letter c with acute
Č	Ccaron - latin capital letter C with caron
č	ccaron - latin small letter c with caron
Ď	Dcaron - latin capital letter D with caron
Đ	Dstrok - latin capital letter D with stroke
đ	dstrok - latin small letter d with stroke
Ē	Emacr - latin capital letter E with macron
Ĕ	emacr - latin small letter e with macron
Ė	Edot - latin capital letter E with dot above
ė	edot - latin small letter e with dot above
Ę	Ecedil - latin capital letter E with cedilla
ę	ecedil - latin small letter e with cedilla
Ě	Ecaron - latin capital letter E with caron
ě	ecaron - latin small letter e with caron
Ğ	Gcaron - latin capital letter G with caron (breve)
ğ	gcaron - latin small letter e with caron (breve)
Ģ	Gcedil - latin capital letter G with cedilla
Ĥ	gapos - latin small letter g with cedilla above
Ī	Imacr - latin capital letter I with macron
ī	imacr - latin small letter i with macron
İ	Icedil - latin capital letter I with cedilla
Ķ	Kcedil - latin capital letter K with cedilla
ķ	kcedil - latin small letter k with cedilla
Ĺ	Lacute - latin capital letter L with acute
ĺ	lacute - latin small letter l with acute
Ļ	Lcedil - latin capital letter L with cedilla
ļ	lcedil - latin small letter l with cedilla
Ł	Lstrok - latin capital letter L with stroke
ł	lstrok - latin small letter l with stroke
Ń	Nacute - latin capital letter N with acute
ń	nacute - latin small letter n with acute
Ņ	Ncedil - latin capital letter N with cedilla
ņ	ncedil - latin small letter n with cedilla
Ň	Ncaron - latin capital letter N with caron
ň	ncaron - latin small letter n with caron
Ō	Omacr - latin capital letter O with macron
ō	omacr - latin small letter o with macron

Character	DESCRIPTION
Ő	Odblac - latin capital letter O with double acute
ő	odblac - latin small letter o with double acute
Ŗ	Rcedil - latin capital letter R with cedilla
ŗ	rcedil - latin small letter r with cedilla
Ř	Rcaron - latin capital letter R with caron
ř	rcaron - latin small letter r with caron
Ś	Sacute - latin capital letter S with acute
ś	sacute - latin small letter s with acute
Ş	Scedil - latin capital letter S with cedilla
ş	scedil - latin small letter s with cedilla
Š	Scaron - latin capital letter S with caron
š	scaron - latin small letter s with caron
Ţ	Tcedil - latin capital letter T with cedilla
ţ	tcedil - latin small letter t with cedilla
Ť	Tcaron - latin capital letter T with caron
ť	tcaron - latin small letter t with caron
Ū	Umacr - latin capital letter U with macron
ū	umacr - latin small letter u with macron
Ů	Uring - latin capital letter U with ring above
ů	uring - latin small letter u with ring above
Ű	Udblac - latin capital letter U with double acute
ű	udblac - latin small letter u with double acute
Ų	Ucedil - latin capital letter U with cedilla
ų	ucedil - latin small letter u with cedilla
Ż	Zacute - latin capital letter Z with acute
ż	zacute - latin small letter z with acute
Ż	Zdot - latin capital letter Z with dot above
ż	zdot - latin small letter z with dot above
Ž	Zcaron - latin capital letter Z with caron
ž	zcaron - latin small letter z with caron

[FR Doc. 03–23562 Filed 9–25–03; 8:45 am]
BILLING CODE 3510–16–C

Federal Register

Friday,
September 26, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2003–04 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 27, 2003. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 26, 2003.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2003–04 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 18–19, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, 2003, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations. In the August 27, 2003, **Federal Register** (68 FR 51658), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2003–04 early-season hunting dates, hours, areas, and limits. Subsequently, on August 28, 2003, we published a final rule in the **Federal Register** (68 FR 51832) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 30–31, 2003, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2003–04 regulations for these species. On August 19, 2003, we published in the **Federal Register** (68 FR 50016) the proposed frameworks for the 2003–04 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2003–04 season. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Population Status and Harvest

A brief summary of information on the status and harvest of waterfowl excerpted from various reports was included in the August 19 supplemental proposed rule. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the May 6, 2003, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 23, 2003, **Federal Register**, discussed the regulatory alternatives for the 2003–04 duck hunting season. Late-season comments are summarized below and numbered in the order used in the May 6 **Federal Register** document. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: An individual from New Jersey expressed opposition to all hunting and believed that the Flyway Council recommendations were not representative of the general U.S. population.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits and times and lines of flight of migratory birds, we believe that the hunting seasons provided herein are compatible with the current status of migratory bird populations and long-term population goals.

Additionally, we are obligated to, and do give serious consideration to all information received as public comment. While there are problems

inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always we continue to seek new ways to streamline and improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative, with the exception of some specific bag limits described below in sections 1.B. Regulatory Alternatives and 1.D. Special Seasons/Species Management. More specifically, recommendations concerned sections iii. Black Ducks, iv. Canvasbacks, v. Pintails, and viii. Wood Ducks.

Service Response: Currently, two stocks of mallards (midcontinent and eastern) are recognized for the purposes of Adaptive Harvest Management (AHM). This year, we will again use an approach to the optimization of these stocks' harvest, whereby the Atlantic Flyway regulatory strategy is based exclusively on the status of eastern mallards, and the regulatory strategy for the remaining Flyways is based exclusively on the status of midcontinent mallards. However, this approach continues to be considered provisional until its implications are better understood, and until such time that a more comprehensive approach to managing multiple duck stocks is developed.

For the 2003 hunting season, the Service makes two significant changes to AHM, based on recommendations from the Flyway Councils: (1) The ''very-restrictive'' alternative was eliminated from the set of regulatory alternatives, and (2) consideration of a closed season in the western three Flyways is restricted to midcontinent (traditional survey plus Minnesota, Wisconsin, and Michigan) mallard breeding population levels <5.5 million. We also continue to offer extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives. The regulatory alternatives were discussed in the June 23 **Federal Register**.

The 2003 optimal regulatory strategy for midcontinent mallards was based on: (1) The revised regulatory alternatives, including the closed-season constraint; (2) updates of regulation-specific harvest rates; (3) current population models and updated model weights; and (3) the dual objectives to maximize long-term cumulative harvest and achieve a population goal of 8.8 million midcontinent mallards. Based on a spring population survey of 8.8 million mallards and 3.5 million Canadian ponds, the optimal regulatory choice for 2003 is the ''liberal'' regulatory alternative in the three western Flyways.

The optimal regulatory strategy for eastern mallards was based on: (1) The revised regulatory alternatives; (2) current population models and updated model weights; and (3) an objective to maximize long-term cumulative harvest. The spring population size of eastern mallards (Northeast plot survey + Canada) this year was 1.04 million, suggesting that the ''liberal'' regulatory alternative in 2003 is appropriate for the Atlantic Flyway.

We concur with the recommendations of the four Flyway Councils regarding selection of the ''liberal'' regulatory alternative and, therefore, will adopt the ''liberal'' alternative, as described in the June 23 **Federal Register**.

B. Regulatory Alternatives

Council Recommendations: The Central Flyway Council recommended the availability of two daily-bag-limit options, termed Options A and B. Under Option A, the daily bag limit would be 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females) 3 scaup, 2 redheads, 2 wood ducks, 1 pintail, 1 mottled duck, and 1 canvasback. The season for pintails and canvasbacks would be limited to 39 days (see further discussion under section 1.D. Special Seasons/Species Management). Under Option B, the daily bag limit would be 5 ducks, with species and sex restrictions as follows: 3 scaup, 2 redheads, 2 wood ducks, and 1 only of pintail, mottled duck, hen mallard, or canvasback. There would be no restrictions on the season length for canvasbacks or pintails.

Written Comments: An individual from Minnesota expressed support for a 45-day season with a 4-duck daily bag limit.

Service Response: We do not support the Central Flyway Council's Option B. The regulatory alternatives for the 2003–04 hunting season were discussed in the June 23 **Federal Register**. We believe that new approaches to multi-species harvest management should be addressed in the overall context of AHM harvest management for ducks. The AHM Task Force, AHM Working Group, and Flyway Councils are considering development of multi-species approaches, and these fora would be appropriate places for further discussion of the Central Flyway proposal.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States the opportunity to return to a 2-black-duck daily bag limit, providing they close the black duck season one day for each day a 2-black-duck bag limit is employed. No offset would be required for days when the black duck bag limit was restricted to 1 bird. Both increased bag days and closed days must be consecutive, except that 1 split would be allowed. This regulation would be evaluated annually by the Atlantic Flyway Council.

Written Comments: The Massachusetts Division of Fisheries and Wildlife and the Virginia Department of Game and Inland Fisheries expressed disappointment in the Service's decision not to support the Atlantic Flyway Council's proposal for an increase in the black duck bag limit.

Service Response: We do not support the Atlantic Flyway Council's recommendation. This request is similar to the Council's request last year, which the Service denied due to the difficulty in assessing options on a Flyway basis and the inability to assess whether or not these options are harvest-neutral. Until there is some formal agreement to manage black duck harvests on something less than a rangewide basis, we believe black ducks should continue to be managed at that level. Although black duck numbers may have improved slightly in recent years in some areas, they still remain below goal, and this spring's breeding population estimates declined 13 percent.

Presently, we are waiting for the International Black Duck Harvest Management Working Group to complete its report, which is due in November. Until we have some formal agreement among the stakeholders, including the Mississippi Flyway, we believe it is premature to consider the

harvest strategy proposed by the Council.

iv. Canvasbacks

Council Recommendations: The Atlantic Flyway Council recommended modifying the 1994 Canvasback Harvest Strategy to allow for a limited canvasback harvest (season within a season) during years when the predicted harvest exceeds the allowable harvest, but can still be achieved by a more restrictive package (moderate, restrictive, or very restrictive). The season closure threshold would remain at a predicted spring breeding population of 500,000. For 2003, the Council recommended that the Service allow a restrictive canvasback season of 30 consecutive hunt days for the Atlantic Flyway, with a one-bird daily limit.

The Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a restrictive canvasback season of 30 consecutive days for the Mississippi Flyway, with a one-bird daily limit.

The Central Flyway Council recommended that the existing interim harvest strategy for canvasbacks be followed during the 2003–04 season. The Council further recommended under Option A (described in section 1.B. Regulatory Alternatives) that the canvasback season be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The Pacific Flyway Council recommended a canvasback season of 86 days, plus 2 youth hunt days in the Pacific Flyway, with a daily bag limit of 1, and flexibility for States to select dates for canvasback seasons during any period within the duck season framework dates.

Service Response: We continue to support the harvest strategy adopted in 1994. This year, the strategy suggests that current population and habitat status, combined with the predicted harvests, would not support harvest of canvasbacks in the ''liberal'' season alternative. This spring, the estimate of canvasback abundance during the May survey was 558,000 birds, and the number of ponds in Prairie Canada was about 3.5 million. Using the model from the canvasback harvest management strategy, the number of birds that could be harvested in the United States during the 2003–04 hunting season, while still attaining the objective of 500,000 birds next spring, is about 102,000. The predicted harvest in the United States, associated with the ''liberal'' regulatory alternative in the United States, is about 119,000 birds.

We believe that, if the harvest strategy indicates a full season cannot be allowed, in some cases, a limited harvest might be possible and still attain the spring abundance objective. Thus, we will use a season length at the level of the ''restrictive'' AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. The season may be split according to the applicable zone/split duck-hunting configuration approved for each State.

Further, for the second time in the past 3 years, we have departed from the 1994 canvasback harvest strategy. During the coming year, we will work with the Flyway Councils to review the harvest strategy.

v. Pintails

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the regulations for pintails in 2003–04 be a 60-day season with a 1-bird daily bag limit.

The Central Flyway Council recommended that the existing interim harvest strategy for pintails be followed during the 2003–04 season. The Council further recommended under Option A (described in section 1.B. Regulatory Alternatives) that the pintail season be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The Pacific Flyway Council recommended a full-season framework for pintails, with a daily bag limit of 1 bird.

Service Response: Last year, the Flyway Councils and the Service agreed to depart from the established pintail harvest strategy and implement a ''season-within-a-season'' in all four Flyways for northern pintails. The season length employed was the season length for the restrictive alternative under the AHM protocol in all four Flyways. The overall harvest declined, although not as much as predicted by the current models. This year, the breeding population estimate increased to 2.6 million; however, this estimate is still about 40 percent below the long-term average. The interim strategy recommends a 1-pintail daily bag limit nationwide. However, based on the models, the predicted harvest (slightly more then 600,000) is projected to result in a lower breeding population in 2004. Implementation of another year of the restrictive season length for pintails is projected to result in about a 7 percent population increase. Since the use of the strategy has not achieved the desired population growth, and model projections suggest a population decline under a ''liberal'' season length with a 1-bird daily bag limit in all four Flyways, we will again depart from the harvest strategy and restrict pintail season length to those in the ''restrictive'' AHM alternative. Season length would be 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway. The season may be split according to the applicable zone/split duck-hunting configuration approved for each State.

Further, for the second year in a row, we are departing from the interim harvest strategy for the reasons noted above, and in recognition that the habitat conditions in key pintail breeding areas offer some real chance to achieve population growth. During the coming year, we will work with the Flyway Councils to review the harvest strategy, particularly the provision that permits seasons that are expected to reduce future breeding populations.

viii. Wood Ducks

Council Recommendations: The Atlantic Flyway Council recommended increasing the wood duck bag limit to three birds during October 1 through November 6 in the Atlantic Flyway for a 3-year experimental period (2003/04–2005/06).

Written Comments: The Massachusetts Division of Fisheries and Wildlife and the Virginia Department of Game and Inland Fisheries expressed disappointment in the Service's decision not to support the Atlantic Flyway Council's request for a three-wood-duck bag limit in October.

Service Response: We do not support the Atlantic Flyway Council's recommendation. We are continuing to evaluate the usefulness of a modeling approach to the management of wood duck harvests; however, this work is not yet completed and we believe that changes in bag limits are premature at this time. Further, we are concerned about the potential effects of this change on local breeding populations.

4. Canada Geese

B. Regular Seasons

The Central Flyway Council recommended that regular-season frameworks for dark geese in the west-tier States consist of a framework opening date of the Saturday nearest September 24 (September 27, 2003) and a framework closing date of the Sunday nearest February 15 (February 15, 2004). The season could be divided into 2 segments, except in Wyoming, where

the season could be divided into 3 segments and evaluated in accordance with Service criteria. Season length would be 107 days, except in Colorado and Texas, where the season length would be 95 days. The daily bag limit would be five dark geese in the aggregate, with the following exceptions: (a) In the Western Goose Zone of Texas, the daily bag limit would be one white-fronted goose and three other dark geese (in the aggregate), and (b) in Colorado, the daily bag limit would be three dark geese in the aggregate. The possession limit would be twice the daily bag limit.

The Pacific Flyway Council recommended increasing the goose season length in eastern Washington from 100 to 107 days, creation of a new management area within Oregon's Northwest Special Permit Zone, elimination of California's San Joaquin Valley Special Management Area, and increasing the goose season length in Humboldt and DelNorte Counties in California from 9 to 16 days.

Written Comments: The Maryland Department of Natural Resources and the Virginia Department of Game and Inland Fisheries requested that the daily bag limit for Atlantic Population (AP) Canada geese be increased from 1 to 2 for the last 10 days of the 45-day season. They cited the fact that while the spring population estimates for 2003 were similar to the previous year, production is very good and a larger fall flight is expected this year. Further, they noted that AP geese have made a remarkable recovery in recent years from the low recorded in 1995, and estimated harvest rates from the 2002–03 hunting season were lower than projected.

They believe that this modest liberalization will not deter continued growth of this population and is justified to provide greater hunting opportunities in the primary AP goose winter area.

Ten individuals from Virginia and five individuals from Maryland requested a two bird daily bag limit for a portion of the AP goose season. One individual from Maryland was against this requested increase.

Service Response: We concur with all the Council recommendations except for one aspect regarding the creation of a new management area within Oregon's Northwest Special Permit Zone. We continue to support efforts to address long-standing concerns about agricultural damage caused by Canada geese in this area, and would support the creation of the recommended zone with the condition that the daily bag limit for cackling Canada geese be reduced to two birds in the four-bird goose bag during the early portion of the goose season chosen for the new zone. We believe this restriction will help to minimize possible impacts on cackling Canada geese present in the area during this season. Cackling Canada geese are an important sport and subsistence resource, and the population is currently 30 percent below objective levels and has not shown any increase in recent years. We believe that additional take of cackling Canada geese should not be encouraged at this time.

Regarding Maryland and Virginia's request for a 2-bird bag limit for a portion of the AP goose season, we are encouraged by the recovery of AP Canada geese in recent years and commend the Atlantic Flyway Council for its cooperation and support of breeding-ground management programs. While harvest rates based on last year's hunting regulations appear to be low, these data are based on only one year's information. Despite the production outlook, and in view of the history of harvest impacts on this population, we suggest a conservative harvest strategy for the 2003–04 hunting season. Similarly, the Flyway Council did not support a liberalization in bag limits for the Chesapeake Region. Therefore, we do not support these requests for liberalization. We strongly encourage the Atlantic Flyway to update its management plan for AP geese, including specific population objectives and detailed strategies to guide future harvest management.

C. Special Late Season

Council Recommendations: The Atlantic Flyway Council recommended that the southern boundary of Massachusetts' late Canada goose coastal zone be extended southward from the present boundary in Duxbury to the Cape Cod Canal.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the experimental late (December) special Canada goose season in Minnesota be granted operational status.

Service Response: We concur.

8. Swans

Council Recommendations: The Central Flyway Council recommended that up to 200 tundra swan permits be temporarily transferred from South Dakota to North Dakota beginning in the 2003 season.

Service Response: We concur. The transfer of swan hunting permits within a Flyway is in accordance with guidelines in the Cooperative Flyway Management Plan for the Eastern Population of Tundra Swans.

In addition, the Service has completed the final environmental assessment (EA) for general swan seasons in the Pacific Flyway (the availability of the draft EA was announced in the May 16, 2003, **Federal Register** [68 FR 26642]). The EA includes a review of the experimental general swan hunting seasons that took place from 1995 to 2000, as well as a summary of the results of subsequent 2000–03 hunting seasons. Information from the most recent breeding and wintering populations surveys is also included in the EA. Three alternatives are evaluated to address the future of operational swan hunting seasons in Utah, Nevada, and the Pacific Flyway portion of Montana. The issuance of a new EA fulfills the Service commitment to assess the Pacific Flyway swan seasons at the end of the 2002–03 hunting season as established in the most recent EA on the issue, the availability of which was announced in the April 25, 2001, **Federal Register** (66 FR 20828). The EA focuses on the issue of whether or not to establish an operational approach for swan hunting. Related efforts to address population status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans are also discussed. Three alternatives, including the selected action, were considered. Copies are available from the Service's Web site at *www.migratorybirds.fws.gov* or by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Additional NEPA considerations concerning general swan seasons in the Pacific Flyway are covered by the EA, ''Proposal to Establish Operational General Swan Hunting Seasons in the Pacific Flyway,'' dated August 5, 2003. We published a notice of availability in the August 19, 2003, **Federal Register** (68 FR 50016) containing the late season proposed frameworks. Copies of both

are available from the address indicated under **ADDRESSES**.

Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading *Regulatory Flexibility Act.* Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES**.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under *Executive Order 12866.* This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996 and 1998 and will be updated in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES**.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we plan to use the exemption contained in 5 U.S.C. 808 (1) to make this rule effective immediately.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act (MBTA). Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions.

We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2003–04 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

Dated: September 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2003–04 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2003, and March 10, 2004.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days, except pintails and canvasbacks which may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single pintail

and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut: North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland: Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

Massachusetts: NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey: Statewide: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: Southern James Bay Population (SJBP) Zone: A 70-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 25) and February 15, with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Pennsylvania: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day

season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 60-day season between the Saturday nearest September 24 (September 27) and January 31, with a 3-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days, except that the season for pintails and canvasbacks may not exceed 30 days for each species, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 27) and March 10; for white-fronted geese not to exceed 86 days, with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 27) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 27) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 126,400 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 92 days or when 19,300 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone—The season for Canada geese will close after 92 days or when 24,100 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 92 days or when 28,600 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 20,200 birds. Of the 20,200-bird quota, 13,100 birds will be allocated to the Ballard Reporting Area and 5,050 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) MVP Zone—The total harvest of Canada geese will be limited to 94,800 birds. The framework opening date for all geese is September 16, and the season for Canada geese may extend for 55 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 50 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan and Central Michigan GMUs—A special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone.

(1) West Central Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Swan Lake Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the State—

(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 90,000 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 26,100 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 1,000 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 58,400 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 93 days, except in the Mississippi River Subzone, where the season may not exceed 71 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 57,900 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: (1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13). A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) *Remainder of the Central Flyway:* 74 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may

be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 27) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits: Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for pintails and canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 4 scaup, 2 redheads. A single pintail and canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the last Sunday in January (January 25). Basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 27), and the last Sunday in January (January 25). Basic daily bag limits are 3 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 1).

Balance-of-the-State Zone: An 86-day season may be selected. Limits may not include more than 3 geese per day, of which not more than 2 may be white-fronted geese and not more than 1 may be a cackling Canada goose or Aleutian Canada goose. Two areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, the open season for Canada geese may be 16 days. The daily bag limit shall contain no more than 1

Canada goose, cackling Canada goose or Aleutian Canada goose.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, in the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Harney, Klamath, Lake, and Malheur County Zone—For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose. Season dates in the Lower Columbia / N. Willamette Valley Management Area may be different than the remainder of the Northwest Special Permit Zone; however, for those season segments different from the Northwest Special Permit Zone, the cackling Canada goose limit is 2.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook County.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho

Northern Unit: The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit: The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone: The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Wyoming: The daily bag limit for dark geese is 4.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 29). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 4). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill-measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 14) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August, 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2003, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 4) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west

to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north

along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrrel Rd. (Hall/Hamilton County line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP L–Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84;

west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H–Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

SJBP Zone: Allegany, Carroll, Frederick, Garrett, Washington Counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire: Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Area: that area east and north of a continuous line extending along Route 11 from the New York-Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont State line.

St. Lawrence Area: New York State Wildlife Management Units (WMUs): 6A, 6C, and 6H.

Northeast Area: that area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, excluding the Lake Champlain and St. Lawrence Areas.

Southwest Area: consists of the following WMUs: 9C, 9G, 9H, 9J, 9K, 9M, 9N, and 9R; that part of WMU 9A lying south of a continuous line extending from the New York-Ontario boundary east along Interstate Route 190 to State Route 31, then east along Route 31 to Route 78 in Lockport; that part of WMU 9F lying in Erie County; and that part of WMU 8G lying south and west of a continuous line extending from WMU 9F east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to WMU 9H.

South Central Area: consists of the following WMUs: 3A, 3C, 3H, 3K, 3N, 3P, 3R, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 7R, 7S, 8T, 8W, 8X, 8Y, 9P, 9S, 9T, 9W, 9X, and 9Y; that part of WMU 3G lying in Putnam County; that part of WMU 3S lying northwest of Interstate Route 95; and that part of WMU 7M lying south of a continuous line extending from IR 81 at Cortland east along 41 Route to Route 26, then north along Route 26 to Route 23, then east along Route 23 to Route 8 at South New Berlin.

West Central Area: that area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81 and then south along Interstate Route 81 to the New York-Pennsylvania boundary, excluding the Southwest and South Central Areas.

East Central Area: that area east of Interstate 81 that is south of a continuous line extending from Interstate Route 81 east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, and northwest of Interstate Route 95 in Westchester County, excluding the South Central Area.

Western Long Island Area: that area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to International waters.

Eastern Long Island Area: that area of Suffolk County that is not part of the Western Long Island Area.

Special Late Hunting Area: consists of that area of Westchester County lying southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North

Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer Counties and the area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

SJBP Zone: Erie, Mercer and Crawford Counties, except for the Pymatuning Zone (the area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line).

Pymatuning Zone: The area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line.

AP Zone: The area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

Special Late Canada Goose Season Area: The SJBP zone (excluding the Pymatuning zone) and the northern portion of the AP zone defined as east of U.S. Route 220 from the New York State line, east of U.S. Route 220 to the intersection of I–180, east of I–180 to the intersection of SR 147, east of SR 147 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of I–81, north of I–81 to the intersection of I–80, and north of I–80 to the New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont: Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County—Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia: Same zones as for ducks.

Mississippi Flyway

Alabama: Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas: Northwest Zone: Benton, Carroll, Baxter, Washington, Madison, Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois: Same zones as for ducks, but in addition:

North Zone: Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone: Central Illinois Quota Zone: The Counties of Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of Grundy, LaSalle

and Will Counties south of Interstate Highway 80.

South Zone: Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Indiana: Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa: Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia County, then easterly to the southwest corner of Clinton County, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then easterly to the southwest corner of Midland County, then northerly along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75 / U.S. Highway 23, then northerly along I–75 / U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons: Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12,

east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons: Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri: Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio: Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin: Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas/Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer/Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2, 3, and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Charles Mix, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, and Sully Counties and that portion of Dewey County south of U.S. 212.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Pacific Flyway

Arizona

GMU 1 and 27: Game Management Units 1 and 27.

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and

Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican State line at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39. In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of

the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming (Pacific Flyway Portion)

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

[FR Doc. 03–24386 Filed 9–25–03; 8:45 am]

BILLING CODE 4310–55–P

Reader Aids

Federal Register

Vol. 68, No. 187

Friday, September 26, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

52077–52312 2
52313–52484 3
52485–52678 4
52679–52830 5
52831–53010 8
53011–53280 9
53281–53482 10
53483–53664 11
53665–53870 12
53871–54122 15
54123–54326 16
54327–54650 17
54651–54796 18
54797–54978 19
54979–55190 22
55191–55260 23
55261–55298 24
55299–55432 25
55433–55806 26

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 10, 2003) 53665
7697 52313
7698 52825
7699 52827
7700 52829
7701 53011
7702 53013
7703 54321
7704 54323
7705 54977
7706 55253
7707 55259

Executive Orders:
11145 (See EO 13316) 55255
11183 (See EO 13316) 55255
11287 (See EO 13316) 55255
12131 (Amended by EO 13316) 55255
12196 (See EO 13316) 55255
12216 (See EO 13316) 55255
12367 (See EO 13316) 55255
12382 (See EO 13316) 55255
12905 (See EO 13316) 55255
12958 (See Order of September 17, 2003) 55257
12975 (Revoked by EO 13316) 55255
13018 (See EO 13316) 55255
13046 (See EO 13316) 55255
13111 (Revoked in part by EO 13316) 55255
13137 (See EO 13316) 55255
13147 (Revoked by EO 13316) 55255
13167 (See EO 13316) 55255
13177 (Revoked in part by EO 13316) 55255
13188 (See EO 13316) 55255
13210 (Revoked by EO 13316) 55255
13214 (Revoked by EO 13316) 55255
13218 (See EO 13316) 55255
13223 (See Notice of September 10, 2003) 53665
13224 (See Notice of September 18, 2003) 55189
13225 (Superseded by EO 13316) 55255
13227 (Revoked by EO 13316) 55255
13231 (See EO 13316) 55255
13235 (See Notice of September 10, 2003) 53665
13237 (See EO 13316) 55255
13253 (See Notice of September 10, 2003) 53665
13255 (See EO 13316) 55255
13256 (See EO 13316) 55255
13263 (Revoked by EO 13316) 55255
13265 (See EO 13316) 55255
13270 (See EO 13316) 55255
13278 (Revoked by EO 13316) 55255
13286 (See Notice of September 10, 2003) 53665
13303 (See EO 13315) 52315
13315 52315
13316 (See EO 13316) 55255

Administrative Orders:
Memorandums:
Memorandum of March 28, 2001 (See Memorandum of August 29, 2003) 52323
Memorandum of August 29, 2003 52323
Memorandum of July 22, 2003 53869
Memorandum of September 12, 2003 53969
Notices:
Notice of September 10, 2003 53665
Notice of September 18, 2003 55189
Presidential Determinations:
No. 2003–33 of August

27, 2003 52679
No. 2003–34 of September 9, 2003 54967
No. 2003–35 of September 9, 2003 53871
No. 2003–36 of September 12, 2003 54325
No. 2003–37 of September 14, 2003 54971
No. 2003–37 of September 15, 2003 54973
Orders:
Order of September 17, 2003 55257

5 CFR

575 53667
1201 54651
6501 52681
6601 52682
7201 52485
Proposed Rules:
300 53054
310 55012
930 52528

7 CFR

245 53483
301 53873
905 ....52325, 53015, 53021
922 52329
923 52329
924 52329
944 53021
948 ....52332, 53281
993 54979
996 53490
1150 52334
1412 55433
1421 55433
1439 55433
1480 55433
1951 55291
Proposed Rules:
51 52857
246 53903
319 53910
931 53306
991 52860
1000 52860
1001 52860
1005 52860
1006 52860
1007 52860
1030 52860
1032 52860
1033 52860
1124 52860
1126 52860
1131 52860
1135 52860
1210 55556

9 CFR

82 54797
94 53873

10 CFR

50 54123
52 54123
72 ....54143, 55304

11 CFR

Proposed Rules:
106 52529
110 52531
113 52531
9004 52531
9034 52531

12 CFR

11 54981
202 53491
206 53283
220 52486
229 ....52077, 53672
545 53024
550 53024
562 52831
Proposed Rules:
614 53915
620 53915
630 53915
900 54396
932 54396
955 54396
998 54396

14 CFR

21 54520
25 ....52684, 53026, 53028, 53672, 54800
39 ....52078, 52081, 52083, 52085, 52087, 52337, 52487, 52688, 52832, 52833, 52975, 53030, 53032, 53284, 53496, 53498, 53499, 53501, 53503, 54327, 54653, 54985, 54987, 54990, 54992, 54994, 54996, 55191, 55193, 55196, 55433
61 54520
71 ....52088, 52487, 53032, 53033, 53034, 53035, 53674, 53675, 53676, 54328, 54329, 55435
91 54520
95 54802
97 ....53035, 53287, 54998
119 54520
121 53877
125 ....53877, 54520
135 ....53877, 54520
142 54520
250 52835
1260 54654
Proposed Rules:
39 ....52145, 52148, 52539, 52720, 52862, 52864, 52865, 52868, 52870, 53055, 53058, 53061, 53309, 54400, 54680, 54682, 54684, 54686, 54688, 54690, 54691, 54694, 54862, 54864, 54866, 54869, 54872, 54874, 55321
71 ....52148, 52150, 53925, 55012, 55013, 55015

15 CFR

772 54655
774 54655
Proposed Rules:
764 54402
766 54402
801 (2 documents) 55202, 55204

16 CFR

1512 52690

17 CFR

4 ....52836, 53430
232 53289
Proposed Rules:
239 54644
240 54590
249 54590

18 CFR

4 52089
16 52089
141 52089
157 52089

19 CFR

12 55000

20 CFR

416 ....53219, 53506
422 55304
Proposed Rules:
404 55323
408 55323
416 55323

21 CFR

520 ....54658, 54803, 54804, 55199, 55308
522 ....54804, 54806, 55199, 55200
524 55201
556 54658
558 ....54658, 54806
573 52339
1308 ....53289, 53677
1310 53290
Proposed Rules:
1301 53529
1308 52872

22 CFR

230 53878
Proposed Rules:
96 54064
98 54119

23 CFR

Proposed Rules:
650 53063

24 CFR

972 54600
982 54335
Proposed Rules:
972 54624
1000 53926

25 CFR

Proposed Rules:
Ch. 1 52151

26 CFR

1 ....52487, 52496, 52975, 52986, 53219, 54336
31 54336
301 55436
602 ....52463, 52496, 54336, 54660
Proposed Rules:
1 ....52466, 52542, 52543, 52544, 52545, 52546, 53008, 53348, 53926, 54062, 54876
31 53448
301 ....52466, 53687

27 CFR

555 53509
Proposed Rules:
9 ....52875, 54696
252 55281

29 CFR

31 54268
4022 53880
4044 53880
Proposed Rules:
1910 53311
1915 53311
1917 54298
1918 54298
1926 ....53311, 53927

30 CFR

48 53037
75 53037
946 53292
Proposed Rules:
57 52151
206 55556
210 55556
938 ....55106, 55134

31 CFR

1 55309
500 53640
501 53640
505 53640
515 53640
535 53640
536 53640
537 53640
538 53640
539 53640
540 53640
545 53640
550 53640
560 53640
575 53640
585 53640
586 53640
587 53640
588 53640
590 53640
591 53640
594 53640
595 53640
596 53640
597 53640
598 53640
Proposed Rules:
1 55016
103 55335
500 53662
501 53662
505 53662
515 53662
535 53662
536 53662
537 53662
538 53662
539 53662
540 53662
545 53662
550 53662
560 53662
575 53662
585 53662
586 53662
587 53662
588 53662

590 53662
591 53662
594 53662
595 53662
596 53662
597 53662
598 53662

32 CFR

2001 55168
2004 55168
Proposed Rules:
179 ....53430, 53532
199 52722
806b 55337

33 CFR

100 ....54660, 54662
117 ....53050, 53513, 54807, 55005
126 55436
147 55443
165 ....52096, 52098, 52340, 52508, 53677, 55312, 55445
Proposed Rules:
100 53533
117 ....52722, 53079, 55020
147 55557
151 55559
165 ....53928, 53930, 53932, 53935, 54177, 54700

36 CFR

7 ....55315, 55448
219 53294
242 55006
1280 ....53680, 53882
Proposed Rules:
800 55354

37 CFR

2 55748
7 55748
Proposed Rules:
1 53816
5 53816

38 CFR

1 55317
3 55466
17 55467
20 ....53681, 53682
61 55467
Proposed Rules:
1 54704
2 54704

39 CFR

111 ....52100, 54664
Proposed Rules:
3001 52546

40 CFR

52 ....52104, 52106, 52110, 52510, 52512, 52691, 52837, 52838, 53515, 53883, 53887, 53891, 54160, 54163, 54167, 54362, 54366, 54672, 55469
61 54790
62 54369
70 ....52517, 52691, 54170, 54366, 54374
81 ....53515, 54672, 55008, 55469
82 ....52841, 54677
94 54956
136 54934
180 ....52343, 52353, 52354, 52695, 53297, 54377, 54386, 54961, 55261, 55269, 55475, 55485, 55494, 55503, 55513, 55519
261 53517
271 52113
281 53520
355 52978
Proposed Rules:
Ch. I 53687, 55563
30 54405
31 54405
33 54405
35 54405
40 54405
51 ....52373, 53081
52 ....52152, 52154, 52155, 52555, 52724, 52879, 53937, 54179, 54181, 54182, 54186, 54190, 54194, 54195, 54406, 54705
61 54794
62 54407
70 ....52724, 54195, 54406, 54407
81 ....54705, 55022
94 54961
141 55023
142 55023
143 55023
194 52724
228 53687
261 55206
271 52156
300 55563
437 53432

41 CFR

51–3 53684
51–4 53684
102–28 53219

42 CFR

413 53222
447 55527
482 53222
483 55528
488 55528
489 53222
Proposed Rules:
410 55566
412 53266
414 55566
1001 53939

44 CFR

62 52700
65 ....54843, 54845
67 ....54851, 54852
Proposed Rules:
67 54877

45 CFR

74 52843
92 52843
302 53052
303 53052
1105 52701
1626 55539

47 CFR

0 52517
1 53523
2 54173
20 54173
51 ....52276, 53524
54 52363
64 53891
73 ....53052, 53304, 54394, 54854, 54855, 54856
76 52127
90 ....54678, 55319
Proposed Rules:
Ch. I 53696
1 ....52156, 52879
2 ....52156, 52879
15 52156
25 53702
27 52156
51 ....52307, 53311
73 ....54408, 54878, 54879
74 55566
87 52156
95 52879
97 52156

48 CFR

538 52127
552 52127
923 52129
970 52129
1804 53525
Proposed Rules:
1 54294
25 54296
36 54294
53 54294
225 53945
246 53946
252 53945
806 53705
9904 53312

49 CFR

105 52844
107 ....52844, 55542
171 52844
172 52363
178 52363
180 ....52363, 55542
192 53895
195 53526
541 54857
571 ....54861, 55544
585 55319
593 55545
596 54861
Proposed Rules:
71 53082
171 53314
173 53314
180 53314
385 53535
390 53535
571 ....54879, 55217
1152 52168

50 CFR

17 55140
20 55784
100 55006
216 52132
223 54934
622 55554
635 52140
648 ....52141, 53528, 55010
660 ....52519, 52523, 52703, 53053, 53685
679 ....52141, 52142, 52718, 52856, 53686, 54395
Proposed Rules:
13 ....52727, 53320
16 ....53705, 54409
17 ....52169, 53083, 53320, 53327, 53947
21 52727
223 ....53947, 55023
224 53947
622 ....53706, 55573
635 ....54410, 54885
648 ....55283, 55358
660 ....52732, 53101, 55240, 53334
679 ....52173, 52378

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 SEPTEMBER 26, 2003

ENERGY DEPARTMENT
Floodplain and wetland environmental review requirements; compliance; published 8-27-03

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenazate; published 9-26-03
Chlorfenapyr; published 9-26-03
Etoxazole; published 9-26-03
Fenhexamid; published 9-26-03
Imazapyr; published 9-26-03
Thiacloprid; published 9-26-03

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc.; published 9-26-03

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Glen Canyon National Recreation Area, UT and AZ; personal watercraft use; published 9-26-03

LEGAL SERVICES CORPORATION
Aliens; legal assistance restrictions:
Alien eligibility for representation by LSC programs; published 9-26-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Gulfstream; published 9-11-03

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad workplace safety:
Roadway maintenance machine safety; published 7-28-03

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations; published 9-26-03

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
DOT specification cylinders; maintenance, requalification, repair, and use requirements; published 9-26-03

VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Spine; published 8-27-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in California
Reserve raisins intended for use as cattle feed; additional storage payment reduction; comments due by 9-29-03; published 7-31-03 [FR 03-19492]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—
Arizona, California, Nevada, and Texas; portions removed; comments due by 10-3-03; published 8-4-03 [FR 03-19695]

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Blueberries; comments due by 9-29-03; published 7-30-03 [FR 03-19344]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Groundfish Observer Program; comments due by 10-3-03; published 9-3-03 [FR 03-22456]
Pacific cod; comments due by 10-2-03; published 8-18-03 [FR 03-21048]
Atlantic highly migratory species—
Atlantic shark; comments due by 9-30-03; published 8-12-03 [FR 03-20516]
Atlantic shark; comments due by 10-3-03; published 9-19-03 [FR 03-24113]
Atlantic tunas, swordfish, and sharks; comments due by 9-30-03; published 8-1-03 [FR 03-19522]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 10-2-03; published 9-5-03 [FR 03-22669]
West Coast salmon; comments due by 9-29-03; published 9-12-03 [FR 03-23204]
Western Pacific bottomfish; comments due by 9-29-03; published 8-28-03 [FR 03-22040]

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Nonavailability statement, referral authorization requirements, and specialized treatment services program elimination; comments due by 9-29-03; published 7-31-03 [FR 03-19452]

EDUCATION DEPARTMENT
Family Educational Rights and Privacy Act:
Signed and dated written consent; electronic format; comments due by 9-26-03; published 7-28-03 [FR 03-19082]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Small generator interconnection agreements and procedures; standardization; comments due by 10-3-03; published 8-19-03 [FR 03-20155]

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Ambient air quality standards, national—
Volatile organic compounds, exclusion of 4 compounds; revision; comments due by 10-3-03; published 9-3-03 [FR 03-22449]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
West Virginia; comments due by 9-26-03; published 8-27-03 [FR 03-21910]
Air quality implementation plans; approval and promulgation; various States:
Michigan; comments due by 10-2-03; published 9-2-03 [FR 03-22155]
Minnesota; comments due by 10-2-03; published 9-2-03 [FR 03-22157]
Hazardous waste program authorizations:
New Mexico; comments due by 9-26-03; published 8-27-03 [FR 03-21594]
Oklahoma; comments due by 9-26-03; published 8-27-03 [FR 03-21592]
South Carolina; comments due by 10-2-03; published 9-2-03 [FR 03-22311]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus subtilis var. amyloliquefaciens (strain FZB24); comments due by 9-29-03; published 7-30-03 [FR 03-19134]
Boscalid; comments due by 9-29-03; published 7-30-03 [FR 03-19357]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; comments due by 9-29-03; published 8-13-03 [FR 03-20524]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Interconnection—
Incumbent local exchange carriers; unbundling

obligations; correction; comments due by 10-2-03; published 9-10-03 [FR 03-22970]

Interconnection—

Incumbent local exchange carriers; unbundling obligations; comments due by 10-2-03; published 9-2-03 [FR 03-22194]

Satellite communications—

Satellite licensing procedures; comments due by 9-26-03; published 8-27-03 [FR 03-21650]

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):

Anti-tying restrictions; exception; comments due by 9-30-03; published 8-29-03 [FR 03-22090]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Milk, cream, and yogurt products; lowfat and nonfat yogurt standards revocation petition; yogurt and cultured milk standards amendment; comments due by 10-1-03; published 7-3-03 [FR 03-16789]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Florida; comments due by 9-30-03; published 8-1-03 [FR 03-19647]

Marine casualties and investigations:

Chemical testing following serious marine incidents; comments due by 9-30-03; published 8-25-03 [FR 03-21643]

Regattas and marine parades:

Child SMILE American Tour Fort Lauderdale Offshore Gran Prix; comments due by 9-26-03; published 9-11-03 [FR 03-23186]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

FHA programs; introduction:

Tax credit proceeds distribution; comments due by 9-29-03; published 7-30-03 [FR 03-19286]

Public and Indian housing:

Over-income families; public housing agencies discretion in treatment; comments due by 9-30-03; published 8-1-03 [FR 03-19623]

INTERIOR DEPARTMENT

Indian Affairs Bureau

Law and order on Indian reservations:

Paiute-Shoshone Indian Tribe of Fallon Reservation and Colony, NV; Court of Indian Offenses removed; comments due by 9-29-03; published 7-30-03 [FR 03-19314]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards, etc.:

Repiratory protection—

Assigned protection factors; comments due by 10-2-03; published 9-10-03 [FR 03-23078]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation—

Regulatory review for reduction of burden on federally-insured credit unions; comments due by 10-1-03; published 7-3-03 [FR 03-16795]

NUCLEAR REGULATORY COMMISSION

Source material; domestic licensing:

Utah uranium mills and byproduct material disposal facilities; alternative groundwater protection standards; use; comments due by 9-26-03; published 8-27-03 [FR 03-21884]

PERSONNEL MANAGEMENT OFFICE

Competitive service and status; regulatory review; comments due by 9-29-03; published 7-31-03 [FR 03-19470]

Physicians' comparability allowances; comments due by 9-29-03; published 7-29-03 [FR 03-19088]

POSTAL RATE COMMISSION

Practice and procedure:

Baseline and functionality equivalent negotiated service agreements; docket establishment; comments due by 9-29-03; published 9-4-03 [FR 03-22478]

POSTAL SERVICE

Domestic Mail Manual:

Move update and address matching requirements; changes; comments due by 9-29-03; published 8-28-03 [FR 03-22048]

SMALL BUSINESS ADMINISTRATION

Business loans:

Maximum loan guaranty and gross loan amounts, guaranteed financing percentages, etc.; comments due by 9-29-03; published 8-28-03 [FR 03-22012]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Vocational rehabilitation services, employment services, or other support services programs; benefit payments to participating individuals; comments due by 9-30-03; published 8-1-03 [FR 03-19541]

TRANSPORTATION DEPARTMENT

Aviation economic regulations:

Air carrier continuing fitness determinations involving citizenship issue; supporting data; comments due by 9-29-03; published 7-30-03 [FR 03-19455]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Supersonic aircraft noise; technical information request; workshop; comments due by 9-30-03; published 5-23-03 [FR 03-13038]

Airworthiness directives:

Boeing; comments due by 9-29-03; published 8-15-03 [FR 03-20836]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-3-03; published 9-8-03 [FR 03-22706]

McDonnell Douglas; comments due by 9-29-03; published 8-14-03 [FR 03-20715]

Rolls-Royce plc; comments due by 9-29-03; published 7-30-03 [FR 03-19310]

Airworthiness standards:

Special conditions—

Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes; comments due by 9-26-03; published 8-27-03 [FR 03-21959]

Class D airspace; comments due by 9-29-03; published 7-28-03 [FR 03-19166]

Class E airspace; comments due by 9-29-03; published 8-18-03 [FR 03-21081]

Restricted areas; comments due by 9-29-03; published 8-14-03 [FR 03-20772]

Restricted areas; correction; comments due by 9-29-03; published 8-22-03 [FR C3-20772]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad workplace safety:

Roadway maintenance machine safety; comments due by 9-26-03; published 7-28-03 [FR 03-18912]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Head impact; comments due by 9-29-03; published 8-28-03 [FR 03-22010]

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Railroad services abandonment:

Public participation in abandonment proceedings; comment request; comments due by 10-2-03; published 9-2-03 [FR 03-22292]

TREASURY DEPARTMENT

Foreign Assets Control Office

Sierra Leone and Liberia sanctions regulations; rough diamonds; comments due by 10-3-03; published 8-4-03 [FR 03-19821]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Compensatory stock options transfers; cross-reference; comments due by 9-30-03; published 7-2-03 [FR 03-16787]

Golden parachute payments; comments due by 10-3-03; published 8-4-03 [FR 03-19274]

Procedure and administration:
Capital account revaluations; comments due by 9-30-03; published 7-2-03 [FR 03-16788]

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Non-VA physician services associated with outpatient or inpatient care at non-VA facilities; payment; comments due by 9-29-03; published 7-29-03 [FR 03-19174]
Sensori-neural aids; extension to Purple Heart recipients; comments due by 9-29-03; published 7-31-03 [FR 03-19441]

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. 13/P.L. 108–81

Museum and Library Services Act of 2003 (Sept. 25, 2003; 117 Stat. 991)

Last List September 23, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.