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Rules and Regulations

Federal Register

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230, 301, 316, 337, and 410

RIN 3206–AJ99

Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining System, and Training

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to implement certain Governmentwide human resources flexibilities contained in the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act). These regulations provide agencies with: The ability to appoint qualified candidates for positions in the competitive service using direct-hire procedures; increased flexibility in assessing applicants using alternative (category-based) rating and selection procedures; the authority to pay or reimburse the costs of academic degree training from appropriated or other available funds under specified conditions; and increased flexibility to use academic degree training to address agency-specific human capital requirements and objectives. This final regulation also removes Recruitment and Selection for Temporary and Term Appointments Outside the Register, and all related references including temporary appointments pending establishment of a register (TAPER) authority.

EFFECTIVE DATES: July 15, 2004.

FOR FURTHER INFORMATION CONTACT: On alternative rating and selection procedures, Ms. Linda Watson by telephone at (202) 606–0830, fax at (202) 606–2329 or by e-mail at *lmwatson@opm.gov.* On direct-hire authority, emergency indefinite appointments, overseas employment, TAPER, and outside the register appointments, Mr. Larry Lorenz by telephone at (202) 606–0830, fax at (202) 606–2329 or by e-mail at *dmtyrrel@opm.gov.* On academic degree training, Ms. LaVeen M. Ponds by telephone at (202) 606–1394, fax at (202) 606–2329 or by e-mail at *lmponds@opm.gov.* Ms. Watson, Ms. Tyrrell and Ms. Ponds may also be contacted by TTY at (202) 418–3134.

SUPPLEMENTARY INFORMATION: On June 13, 2003, OPM published interim regulations at **Federal Register** 68 FR 35265, to implement provisions of the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act). The Chief Human Capital Officers Act of 2002 (Act) provides Federal agencies with a number of human resources (HR) flexibilities. These flexibilities include direct-hire authority and alternative (that is, category) rating and selection procedures, which will aid in recruitment and hiring. The Act also provides Federal agencies with the authority to pay or reimburse employees for the costs of academic degree training. For additional background information on these flexibilities, please refer to the interim regulations.

During the comment period, OPM hosted four briefings to introduce the new flexibilities. We received written and oral comments from six Federal agencies, one employee union, a Federal program director, one private sector company, and numerous Federal employees and human resources professionals. Based on these comments, we have made several changes in the final regulations to adopt suggestions or to clarify intent. We have addressed these comments as they apply within each flexibility.

Additional information on direct-hire and category rating and selection procedures has been added to OPM's Delegated Examining Operations Handbook. Information on approved Governmentwide direct-hire authorities can be obtained by visiting OPM's Web site at *http://www.opm.gov* and accessing the document entitled ''Primary Appointing Authorities for Career and Career Conditional Employees'' from the Web site index. We have also posted fact sheets on our Web site that address many of the questions received on these new flexibilities. To access these fact sheets, refer to the individual flexibility in the Web site index.

Direct-Hire Authority

Section 3304(c) of title 5, United States Code, provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there is a severe shortage of candidates or a critical hiring need.

We asked agencies to comment on whether OPM should combine the requirements and justification for direct-hire authorities in a single section of the regulations, or whether we should continue to publish them in separate sections. Three of the four agencies responding to our request recommended we retain this information in separate sections. Therefore, this information will remain in separate sections in the final regulation.

The final regulation provides that OPM may independently decide that a severe shortage of candidates or a critical hiring need exists, either Governmentwide or in specified agencies, for one or more specific occupational series, grades (or equivalent), or geographic locations. Alternatively, an agency may, in a written request to OPM, identify the position(s) for which it believes a severe shortage or a critical hiring need exists. The agency must support its request with relevant evidence, as described below. Agencies that use this direct-hire authority must adhere to public notice requirements, as set forth in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G.

Discussion of Comments

Two agencies suggested that the authority to approve the use of direct-hire authority be delegated to agencies, and if not delegated, that the regulation require requests be submitted from the agency headquarters level. Based on our experience to date, there are widely varying interpretations of the appropriate use of direct-hire authority. OPM will, therefore, retain approval authority. However, for consistent application within individual agencies, requests for direct-hire authority should be submitted by the agency

headquarters level. We have added this requirement to the regulation.

One agency suggested we include, in the definition portion of the regulation, the same language explaining when a ''critical need'' exists that was published in the interim regulation supplementary information. In addition, it was suggested that we substitute ''difficult to identify'' for ''unable to identify'' in the definition of ''severe shortage of candidates'' to more realistically describe a severe shortage situation. We have added these language changes in the regulation for clarity.

We received several agency comments and questions about the ability to use a direct-hire authority if a delegated examining unit (DEU) is not present. Although an agency using direct-hire authority must have a delegated examining authority, the agency is not required to have a DEU in place. We have clarified this in the regulation.

One agency commented that the required justification for a direct-hire authority based on a critical hiring need is excessive and burdensome. The agency recommended the regulation provide for agencies to use direct-hire based on a critical hiring need to prevent a staffing crisis rather than to address an existing one. This comment is outside the scope of the provisions of the Act and the regulation. The legislative language provides for direct-hire authority, outside the merit system, when a critical hiring need exists. We want to emphasize, however, that the regulation provides a number of criteria that can be used to evidence a critical hiring need, as they apply to a specific situation. These criteria, not necessarily all-inclusive, present examples of the type of information that will support reasonable evidence that the agency is experiencing a critical situation.

A union objected to the use of direct-hire authority for a severe shortage of candidates unless a special salary rate had been established for the position. Special salary rates are one of the many flexibilities agencies have to address their recruitment difficulties. Establishing a special salary rate is not a prerequisite for obtaining approval for a direct-hire authority. Special salary rates were included in the regulation as an example of a flexibility an agency may use to support its justification for a severe shortage of candidates. We have added language to clarify our intention.

The same union also noted that the regulation requires agencies to submit supporting evidence when requesting direct-hire authority based on a severe shortage of candidates or a critical hiring need, but does not require the same evidence from OPM when deciding on its own that a need exists. In addition, the union commented that similar evidence from OPM to support the need for an extension of existing direct-hire authority should be required. We agree that these additions should be included in the regulation and have added clarifying language.

The union also commented that the ''periodic'' review of existing direct-hire authorities should adhere to a specific schedule and that the content of reviews and the requirement for publication should be identified. We have determined it to be impractical to regulate a schedule for reviewing direct-hire authorities. However, we will ensure that these reviews will take place often and will focus on continued adherence to regulatory intent. We have not adopted this suggestion.

Elimination of Outside-the-Register Procedures

OPM has eliminated 5 CFR part 333, Recruitment and Selection for Temporary and Term Appointments Outside the Register, based on its conclusion that this hiring authority is now obsolete.

One Federal agency submitted comments opposing the elimination of the outside-the-register procedures. The comments did not adequately explain why using other merit-based hiring authorities does not enable the agency to meet its hiring needs. Nor did the agency provide any compelling independent reason for retaining outside-the-register procedures. The comments have not been adopted and the outside-the-register procedures are eliminated.

Elimination of the TAPER Regulation

Based on the elimination of the outside-the-register procedure, OPM has also eliminated the Temporary Appointments Pending the Establishment of a Register (TAPER) regulation.

One Federal agency submitted comments opposing the elimination of the TAPER regulation. The comments did not adequately explain why the agency cannot use other merit-based hiring authorities to meet its hiring needs. Nor did the agency provide any compelling independent reason for retaining the ability to make TAPER appointments. As described in the interim regulation's supplemental information, this regulation has been shown to have outlived its usefulness, and other appropriate appointing authorities are available for use in its place. The comments have not been adopted and the TAPER regulation is eliminated.

Eliminating the TAPER regulation will not adversely affect employees currently serving under TAPER appointments. These individuals will continue under these appointments until they have completed the 3 years of service that entitles them, under 5 U.S.C. 3304a, to be converted to career appointments.

Category Rating and Selection Procedures

Background

Agencies have authority under 5 U.S.C. 3319 to develop a category-based rating method as an alternative way of assessing job applicants for positions filled through the competitive examining process. Traditionally, applicants for Federal jobs are assigned numerical scores, including veterans' preference points, if appropriate, and are considered for selection based on the ''rule of three'' (5 U.S.C. 3318(a)). The category rating method prescribed by the Act does not add veterans' preference points or apply the ''rule of three'' but protects the rights of veterans by placing them ahead of non-preference eligibles within each category. Preference eligibles who meet minimum qualification requirements and who have a compensable service-connected disability of at least 10 percent must be listed in the highest quality category, except when the position being filled is scientific or professional at the GS–9 grade level or higher. When using category rating, agencies must follow veterans' preference procedures as specified in 5 U.S.C. 3319(b) and (c)(2). Consistent with this requirement and with 5 U.S.C. 2302(e)(1)(G), OPM intends to promulgate a regulation in the near future designating section 3319(b) and (c)(2) as a ''veterans' preference requirement'' for purposes of the prohibited personnel practice described in 5 U.S.C. 2302(b)(11). Please refer to the interim regulations' supplementary information in **Federal Register** dated June 13, 2003, 68 FR 35265 for a full discussion of the category rating method.

Discussion of Comments

Based on the complexity of the comments on category rating, we have organized them into topic areas for clarity and for ease of reference.

General

One agency requested that the regulations specify that category rating may be used for term and temporary appointments. Category rating is a method for evaluating applicants under

a competitive examining system. It is not a separate appointing authority. Category rating may be used to fill any competitive service position, including a position filled through a term or temporary appointment. This is reflected in sections 316.302 and 316.402 of the regulation.

One agency requested clarification on the proper placement of the word ''competencies'' in relation to the words ''knowledge, skills, or abilities'' cited in § 337.302(b). We have modified that section to clarify our meaning. This agency also suggested we change the wording in § 337.303(b) to read ''based on job analysis'' instead of ''through job analysis.'' We did not adopt this suggestion because the chosen phrase is consistent with the language in other guides issued by OPM.

Vacancy Announcement

Three agencies and several Federal employees suggested clarification of what is required in the vacancy announcement when using category rating.

The current vacancy announcement requirements of 5 CFR part 330 and Executive Order 13078, requiring the agency to state how applicants will be rated, have not changed. However, agencies have a choice in their basis of rating. Agencies must decide on rating and selection procedures in advance of posting a vacancy announcement. Once a procedure is chosen, it must be described in the vacancy announcement.

Traditionally, agencies described rating procedures in general terms under the ''Basis of Rating'' heading in the vacancy announcement. Under category rating procedures, agencies will continue to use the ''Basis of Rating'' as a means of communicating rating procedures to applicants. Agencies can simply state whether the rating is based on numerical rating procedures or category rating procedures and how veterans' preference will be applied.

Also, agencies were concerned that the statement ''Describe each quality category in the job announcement * * *'' is ambiguous and could be read as tantamount to a requirement to publish the crediting plan and benchmarks in the vacancy announcement. No such requirement applies.

When describing each quality category, agencies may continue to use the ''Qualification Requirement'' heading to describe each quality category. This description could vary from naming the quality categories to describing the competencies or the knowledge, skills, and abilities required for each quality category. OPM does not expect agencies to disclose crediting plans and/or rating schedules with scoring keys to the general public because doing so would jeopardize the integrity and validity of the assessment. These issues are addressed in OPM's Delegated Examining Operations Handbook (DEOH). No changes in the regulation are necessary to respond to this comment.

Veterans' Preference

Two agencies requested that OPM clarify how to use category rating procedures to rank preference eligibles with a service-connected disability of 10 percent or more.

Under the traditional numerical rating and ranking procedures, 5 U.S.C. 3313 instructs agencies to place preference eligibles, who meet the minimum qualification requirements, at the top of the list of eligibles, regardless of their numerical scores, for all positions except scientific and professional positions at the GS–09 (and equivalent) grade level or higher. When filling scientific and professional positions at the GS–09 (and equivalent) grade level or higher, these preference eligibles are ranked according to their numerical scores, including points added under 5 U.S.C. 3309.

Under category rating, the same concept applies. The Act instructs agencies to place preference eligibles, who meet the minimum qualification requirements, in the highest quality category when filling all positions except scientific and professional positions at the GS–09 (and equivalent) grade level or higher. These preference eligibles are placed above the non-preference eligibles. When filling scientific and professional positions at the GS–09 (and equivalent) grade level or higher, these preference eligibles are placed above the non-preference eligibles within the quality category in which they were assessed.

Within a quality category, agencies may list preference eligibles above non-preference eligibles in any order (such as type of preference, alphabetical order, Social Security number, etc.). An example of how to rank preference eligibles with a service-connected disability of 10 percent or more is in Chapter 6 of the DEOH.

Several agencies and Federal employees suggested that OPM explain how to remove preference eligibles from the list after three considerations under category rating.

Currently, 5 U.S.C. 3317(b) allows an appointing official to remove a preference eligible from further consideration after considering and passing over the preference eligible three times. This same rule applies under category rating. A preference eligible within a quality category must receive three bona fide considerations before he or she may be eliminated from further consideration. We intend to address the possibility of adding information about how this rule applies to preference eligibles and whether it applies to non-preference eligibles in an upcoming amendment to this regulation, which will be published with a request for comments.

Reporting Requirements

One agency suggested that OPM include the category rating reporting requirements in the regulation. For convenience and clarity, we added the reporting requirements in § 337.306 of the final regulation. These reporting requirements are also located in Chapter 5 of the DEOH. One agency noticed that the reporting requirements did not include all minority groups in the annual report to Congress. The Act requires that agencies submit information on the impact category rating has on hiring veterans and particular minorities. Because the Act does not include all minority groups in the list of minorities, we may not require agencies to add to the specific groups included in the Act. An agency may do so on its own.

Several Federal employees asked for specific information on where agencies should send their annual reports on category rating. We have added this information at § 337.305 of the final regulation and to the DEOH.

One agency suggested, for reporting consistency, that OPM develop a standard reporting form for use by all agencies. We do not plan to develop a reporting form at this time. Each agency is responsible for developing its own reporting format.

One agency suggested that OPM develop a training module on category rating for its managers. We did not adopt this suggestion because it is outside the scope of the regulation.

Merging Quality Categories

Four agencies and several Federal employees suggested that OPM explain the merging of quality categories. The Act allows agencies to merge the highest quality category with the next lower quality category, if the highest quality category has fewer than three candidates. Merging quality categories is optional. When merging quality categories, preference eligibles from the next lower quality category are placed

above the non-preference eligibles in the newly merged quality category.

Additional information on merging quality categories is described in the DEOH.

Use of Numerical Scores

Three agencies requested clarification on using examinations that produce numerical scores (*e.g.,* Luevano Consent Decree examination or rating schedule) with category rating. We did not include this information in the final regulation, but will publish guidance on this issue that will be posted on OPM's Web site at *http://www.opm.gov.*

Accountability

One professional organization commented that in order to promote accountability, an agency that decides to use category rating should first be required to publicize the data upon which it relied in reaching its decision.

Agencies with delegated examining authority are required to establish an accountability system in compliance with all examining laws and regulations, including category rating. Additionally, OPM has oversight responsibility to ensure that each agency complies with competitive examining laws and regulations. OPM plans to add the alternative ranking and selection procedures to its evaluation agenda to ensure that agencies are complying with the category rating regulations. Because periodic oversight is a sufficient mechanism for accountability, we chose not to adopt the recommendations that agencies should be required to publish their data.

Wage Grade Positions

An agency asked whether category rating may be used for rating and ranking candidates for wage grade positions. Neither the Act nor these regulations bar the use of category rating for wage grade positions.

Excepted Service Positions

A Federal employee suggested that agencies should be able to use category rating to fill excepted service positions. We have not adopted this suggestion. The Act authorizes agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) to develop a category rating system for jobs filled through competitive examining. This authority cannot be extended to the excepted service. However, 5 CFR part 302 gives agencies the flexibility to develop procedures similar to category rating to fill excepted service positions.

Expanded Academic Degree Training Authority

Section 1331(a) of the Act amended the provisions of 5 U.S.C. 4107 by expanding the agency's authority to pay or reimburse employees for the cost of academic degree training when such training contributes significantly to meeting an identified agency training need, resolving an identified agency staffing problem, or accomplishing goals in the agency's human capital management strategic plan.

Discussion of Comments

One agency suggested the reference to 5 CFR 335.103(c)(1)(iii), which requires competition for certain training opportunities that lead to promotion, be added to the requirement for selecting employees for academic degree programs. We agree and have added the reference 5 CFR 335.103(c)(1)(iii) to § 410.308(c). The same agency questioned whether Career Transition Assistance Plan (CTAP) requirements should be followed concerning details for training assignments that may become permanent. The scenario presented by the agency concerning CTAP and detail assignments is outside the scope of the regulation.

A union suggested that OPM redraft the regulation to reincorporate constraints on the use of academic degrees as previously written in 5 CFR 410.308 to guard against the abusive spending of funds for closely related purposes. The wording in the interim regulation does not remove protection against abusive use of funds. Agencies continue to be required to establish written training policies and procedures to support and document the use of this expanded authority in accordance with the criteria in law. Agencies are also required to maintain records on the use and efficacy of their academic degree training programs. However, we have rephrased § 410.308(c) to address specific criteria concerning the use of this authority.

Two agencies commented that sections 410.309 and 410.310 need clarification in light of the expanded authority to pay for academic degrees. They indicated that if the authority is to be a useful tool for retention, it should not require an agency paying for a four-year degree to commit the beneficiary to a 12-year service obligation. Although these sections do not specifically address the expanded academic degree authority, they are integral to the implementation of this authority. Therefore, we have considered the comments and concur that sections 410.309 and 410.310 should be clarified to explain agencies' flexibilities when using this academic degree training authority. We have added a definition to § 410.101 and a new paragraph (d) to § 410.310 to provide an additional method to compute time in training. These changes allow agencies more flexibility in establishing effective continued service requirements following training. Additional information and an example on how to apply section 410.310(d) can be found on the OPM Web site at *http://www.opm.gov/hrd/lead/pubs/handbook/opmintro.asp.*

Other Comments, Including Those on Overseas Employment

One agency and one union commented on the need for clarification of overseas limited appointing authority. We have revised § 301.201 to clarify its meaning.

Two Federal agencies commented that restating referenced sections of title 5, U.S.C., instead of referencing them, would make the regulations clearer and easier to apply. We have adopted this suggestion throughout the regulation.

Executive Order 12866, Regulatory Review

This final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they only apply to Federal agencies and employees.

List of Subjects in 5 CFR Parts 230, 301, 316, 337, and 410

Civil defense, Education, Government employees.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, under the authority of 5 U.S.C. 3304, 3319, and 4107, the interim rule (68 FR 35265) amending 5 CFR parts 230, 301, 316, 337, and 410 is adopted as final with the following changes:

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

■ 1. The authority for part 230 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; § 230.401 also issued under 5 U.S.C. 1104.

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

■ 2. Revise § 230.402(c), (h)(1), and (h)(2) to read as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

* * * * *

(c) *Appointment under direct-hire authority.* An agency may make emergency-indefinite appointments under this section using the direct-hire procedures in part 337 of this chapter.

* * * * *

(h) * * * (1) The term *indefinite employee* includes an emergency-indefinite employee or an employee under an emergency appointment as used in the following: parts 351, 353 of this chapter, subpart G of part 550 of this chapter, and part 752 of this chapter.

(2) The selection procedures of part 337 of this chapter apply to emergency-indefinite appointments that use the direct-hire authority under paragraph (c) of this section.

* * * * *

PART 301—OVERSEAS EMPLOYMENT

■ 3. The authority citation for part 301 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR 1954–1958 Comp., p. 274, unless otherwise noted.

Subpart B—Overseas Limited Appointment

■ 4. Revise § 301.201 to read as follows:

§ 301.201 Appointments of United States citizens recruited overseas.

When there is a shortage of eligible applicants, as defined at § 337.202 of this chapter, resulting from a competitive announcement that is open to applicants in the local overseas area, an agency may give an overseas limited appointment to a United States citizen recruited overseas for a position overseas.

■ 5. Revise § 301.205 to read as follows:

§ 301.205 Requirements and restrictions.

The requirements and restrictions in subpart F of part 300 of this chapter apply to appointments under this subpart.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 6. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Subpart C—Term Employment

■ 7–8. Revise paragraph (a) of § 316.302 to read as follows:

§ 316.302 Selection of term employees.

(a) *Competitive term appointment.* An agency may make a term appointment under part 332 of this chapter, by using competitive procedures, or under part 337 of this chapter, by using direct-hire procedures, as appropriate.

* * * * *

Subpart D—Temporary Limited Employment

■ 9. Revise paragraph (a) of § 316.402 to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) *Competitive temporary appointments.* In accordance with the time limits in § 316.401, an agency may make a temporary appointment under part 332 of this chapter, by using competitive procedures, or under part 337 of this chapter, by using direct-hire procedures, as appropriate.

* * * * *

PART 337—EXAMINING SYSTEM

■ 10–11. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980.

■ 12. Revise subpart B to read as follows:

Subpart B—Direct-Hire Authority

Sec.

337.201 Coverage and purpose.
337.202 Definitions.
337.203 Public notice requirements.
337.204 Severe shortage of candidates.
337.205 Critical hiring needs.
337.206 Terminations, modifications, extensions, and reporting.

§ 337.201 Coverage and purpose.

OPM will permit an agency with delegated examining authority under 5 U.S.C. 1104(a)(2) to use direct-hire authority under 5 U.S.C. 3304(a)(3) for a permanent or nonpermanent position or group of positions in the competitive service at GS–15 (or equivalent) and below, if OPM determines that there is either a severe shortage of candidates or a critical hiring need for such positions. It is not required that this direct-hire authority be exercised by a delegated examining unit. Requests for direct-hire authority must be submitted by the agency's Chief Human Capital Officer (or equivalent) at the agency headquarters level. OPM will determine the length of the direct-hire authority based on the justification.

§ 337.202 Definitions.

In this subpart:

(a) A *direct-hire authority* permits hiring without regard to the provisions of 5 U.S.C. 3309 through 3318; part 211 of this chapter; and subpart A of part 337 of this chapter.

(b) A *severe shortage of candidates* for a particular position or group of positions means that an agency is having difficulty identifying candidates possessing the competencies or the knowledge, skills, and abilities required to perform the job requirements despite extensive recruitment, extended announcement periods, and the use, as applicable, of hiring flexibilities such as recruitment or relocation incentives or special salary rates.

(c) A *critical hiring need* for a particular position or group of positions means that an agency has a need to fill the position(s) to meet mission requirements brought about by circumstances such as, but not limited to, a national emergency, threat, potential threat, environmental disaster, or unanticipated or unusual event or mission requirement, or to conform to the requirements of law, a Presidential directive or Administration initiative.

§ 337.203 Public notice requirements.

Agencies must comply with public notice requirements as prescribed in 5 U.S.C. 3327 and 3330, and subpart G of part 330 of this chapter with respect to any position that an agency seeks to fill using direct-hire authority.

§ 337.204 Severe shortage of candidates.

(a) OPM will determine when a severe shortage of candidates exists for particular occupations, grades (or equivalent), and/or geographic locations. OPM may decide independently that such a shortage exists, or may make this decision in response to a written request from an agency.

(b) An agency when requesting direct-hire authority under this section, or OPM when deciding independently, must identify the position or positions that are difficult to fill and must provide supporting evidence that demonstrates the existence of a severe shortage of candidates with respect to the position(s). The evidence should include, as applicable, information about:

(1) The results of workforce planning and analysis;

(2) Employment trends including the local or national labor market;

(3) The existence of nationwide or geographic skills shortages;

(4) Agency efforts, including recruitment initiatives, use of other appointing authorities (*e.g.*, schedule A, schedule B) and flexibilities, training and development programs tailored to the position(s), and an explanation of why these recruitment and training efforts have not been sufficient;

(5) The availability and quality of candidates;

(6) The desirability of the geographic location of the position(s);

(7) The desirability of the duties and/or work environment associated with the position(s); and

(8) Other pertinent information such as selective placement factors or other special requirements of the position, as well as agency use of hiring flexibilities such as recruitment or retention allowances or special salary rates.

§ 337.205 Critical hiring needs.

(a) OPM will determine when there is a critical hiring need for particular occupations, grades (or equivalent) and/or geographic locations. OPM may decide independently that such a need exists or may make this decision in response to a written request from an agency.

(b) An agency when requesting direct-hire authority under this section, or OPM when deciding on its own, must:

(1) Identify the position(s) that must be filled;

(2) Describe the event or circumstance that has created the need to fill the position(s);

(3) Specify the duration for which the critical need is expected to exist; and

(4) Include supporting evidence that demonstrates why the use of other hiring authorities is impracticable or ineffective.

§ 337.206 Terminations, modifications, extensions, and reporting.

(a) *Termination and modification.* On a periodic basis, for each direct-hire authority, OPM will review agency use of the authority to ensure proper administration and to determine if continued use of the authority is supportable. OPM will terminate or modify a direct-hire authority if it determines that there is no longer a severe shortage of candidates or a critical hiring need. Likewise, when an agency finds there are adequate numbers of qualified candidates for positions previously filled under direct-hire authorities, based on severe shortage of candidates, the agency is required to report this change of events to OPM. OPM may also terminate an agency's authority when the agency has used an authority improperly.

(b) *Extension.* OPM may extend direct-hire authority if OPM determines, based on relevant, recent, and supportable data, that there is or will continue to be a severe shortage of candidates or a critical hiring need for particular positions as of the date the authority is due to expire. In their requests for extensions of direct-hire authorities, agencies must include an update of the supporting evidence that demonstrated the need for the original authority.

(c) *Reporting requirement.* On a periodic basis, OPM may request information from agencies regarding their use of these direct-hire authorities. The requested information may include numbers of positions, title, series, and grade of positions advertised under the direct-hire authority, the number of qualified applicants, the specific qualification criteria, and the number of applicants appointed under the authority.

■ 13. Revise Subpart C to read as follows:

Subpart C—Alternative Rating and Selection Procedures

Sec.
337.301 Coverage and purpose.
337.302 Definitions.
337.303 Agency responsibilities.
337.304 Veterans' preference.
337.305 Reporting requirements.

§ 337.301 Coverage and purpose.

This subpart implements the category rating and selection procedures at 5 U.S.C. 3319. This law authorizes agencies with delegated examining authority under 5 U.S.C. 1104(a)(2) to develop a category rating method as an alternative process to assess applicants for jobs filled through competitive examining.

§ 337.302 Definitions.

In this subpart:

(a) *Category rating* is synonymous with alternative rating as described at 5 U.S.C. 3319, and is a process of evaluating qualified eligibles by quality categories rather than by assigning individual numeric scores. The agency assesses candidates against job-related criteria and then places them into two or more pre-defined categories.

(b) *Quality categories* are groupings of individuals with similar levels of job-related competencies or similar levels of knowledge, skills, and abilities.

§ 337.303 Agency responsibilities.

To use a category rating procedure, agencies must:

(a) Establish a system for evaluating applicants that provides for two or more quality categories;

(b) Define each quality category through job analysis conducted in accordance with the *''Uniform Guidelines on Employee Selection Procedures''* at 29 CFR part 1607 and part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

(c) Describe each quality category in the job announcement and apply the provisions of part 330, subparts B, F, and G of this chapter;

(d) Place applicants into categories based upon their job-related competencies or their knowledge, skills, and abilities; and

(e) Establish documentation and record keeping procedures for reconstruction purposes.

§ 337.304 Veterans' preference.

In this subpart:

(a) Veterans' preference must be applied as prescribed in 5 U.S.C. 3319(b) and (c)(2); and

(b) Veterans' preference points as prescribed in section 337.101 of this part are not applied in category rating.

§ 337.305 Reporting requirements.

Any agency that uses category rating must forward to OPM a copy of the annual report that it must submit to Congress pursuant to 5 U.S.C. 3319(d). Agencies must send their annual reports to the Speaker of the House and the President of the Senate. The report must include the following information:

(a) The number of employees hired under the system;

(b) The impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

(c) The way managers were trained in the administration of category rating.

PART 410—TRAINING

■ 14. Revise the authority citation in part 410 to read as follows:

Authority: 5 U.S.C. 4101, et seq.; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

Subpart C—Establishing and Implementing Training Programs

■ 15. Amend § 410.101 to add paragraph (i) to read as follows:

§ 410.101 Definitions.

* * * * *

(i) *Established contact hours* are the number of academic credit hours assigned to a course(s) times the number

of weeks in a term times the number of terms required to complete the degree.

■ 16. Revise § 410.308 to read as follows:

§ 410.308 Training to obtain an academic degree.

(a) An agency may authorize training for an employee to obtain an academic degree under conditions prescribed at 5 U.S.C. 4107(a).

(b) Colleges and universities participating in an academic degree training program must be accredited by a nationally recognized body. A ''nationally recognized body'' is a regional, national, or international accrediting organization recognized by the U.S. Department of Education. The listing of accrediting bodies is available through the Department.

(c) The selection of employees for an academic degree training program must follow the requirements of § 335.103(b)(3), § 335.103(c)(1)(iii), and subpart A of part 300 of this chapter. The selection and assignment must be accomplished to meet one or more of the criteria identified in 5 U.S.C. 4107(a). Therefore, an agency may competitively select and assign an employee to an academic degree training program that qualifies the employee for promotion to a higher graded position or to a position that requires an academic degree.

(d) Agency heads must assess and maintain records on the effectiveness of training assignments under this section.

(e) On a periodic basis, OPM may request agency information on the use and effectiveness of training assignments under this section.

■ 17. Add paragraph (b)(3) to § 410.309 to read as follows:

§ 410.309 Agreements to continue in service.

* * * * *

(b) Requirements. * * *

(3) The head of an agency shall establish procedures to compute length of training period for academic degree training programs in accordance with § 410.310(d).

■ 18. Amend § 410.310 to add paragraph (d) to read as follows:

§ 410.310 Computing time in training.

* * * * *

(d) When an employee is pursuing an academic degree through an agency academic degree training program, an agency may compute the length of the academic degree training period based on the academic institution's established contact hours.

[FR Doc. 04–13426 Filed 6–9–04; 5:03 pm]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AJ82

Voluntary Early Retirement Under the Homeland Security Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final voluntary early retirement authority regulations. These regulations implement the voluntary early retirement authority provisions of the Homeland Security Act of 2002, which apply to most executive branch agencies. They explain how an agency requests authority from OPM to offer voluntary early retirement to its employees.

DATES: These regulations are effective June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Charles W. Gray at 202–606–0960, FAX at 202–606–2329, TTY at 202–418–3134, or e-mail at *cwgray@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM published interim voluntary early retirement authority regulations on June 13, 2003 (**Federal Register**, volume 68, number 114, fr13jn03–2). As a result, agencies may now receive OPM approval to use voluntary early retirement authority to reshape their workforces for reasons other than downsizing. The alternative to reshaping the workforce through voluntary measures such as early retirement is generally a reduction in force—a tool that can be disruptive and costly, both to employees and agencies. Agencies with a need for downsizing or reshaping their workforces can benefit from the ability to use the voluntary early retirement authority flexibilities that the final version of these regulations will provide.

Section 1313(b) of the ''Homeland Security Act of 2002'' (Public Law 107–296, 116 Stat. 2135) provides agencies the option to offer voluntary early retirement when restructuring as well as downsizing. Previously, voluntary early retirement was only available to agencies when they needed to downsize. To obtain voluntary early retirement authority, unless an agency has a separate statutory authority, it must request approval from OPM. The request must provide the information required by section 1313(b) of Public Law 107–296. OPM will review the agency's request, and, if it meets requirements, issue voluntary early retirement authority. The agency must have OPM approval before using voluntary early retirement authority.

The voluntary early retirement provisions are the same under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). Section 831.114 of title 5, Code of Federal Regulations, is revised to implement the voluntary early retirement provisions under CSRS that were amended by section 1313(b)(1) of Public Law 107–296 and codified in 5 U.S.C. 8336(d)(2). Section 842.213 of title 5, Code of Federal Regulations, is revised to implement the voluntary early retirement provisions under FERS that were amended by section 1313(b)(2) of Public Law 107–296 and codified in 5 U.S.C. 8414(b)(1). The regulations explain which employees are potentially eligible for voluntary early retirement, how an agency requests voluntary early retirement authority from OPM, and how the agency manages the voluntary early retirement authority after approval.

An agency's human capital plan and/or voluntary separation incentive payment implementation plan may be used to satisfy the requirements for requesting a voluntary early retirement authority if it contains the information required in the voluntary early retirement authority regulations.

The revised sections 831.114 and 842.213 expand the definition of ''specific designee'' and describe how agencies are to inform employees returning from military leave about the voluntary early retirement offers they may have missed while they were away. The definition of ''specific designee'' in the interim regulations provided only two examples. It was felt that agency officials might believe that only individuals in one of the two types of positions described in those examples could serve as specific designees. The definition is expanded in the final rule to reduce the possibility of such an error.

During the comment period described in the interim regulations, we received only one comment. It came from a labor organization concerned with the manner in which agencies may limit voluntary early retirement offers. Because the comment conflicted with existing law, and was outside the scope of these regulations, OPM is not adopting the suggestion made by the labor organization in its comments.

After the comment period, two agencies raised questions about employees on military leave who would have, but for their current military service, received voluntary early

retirement offers. Section 4311 of title 38, United States Code, requires that agencies treat employees on military duty as though they were still on the job. Further, it specifies that employees are not to be disadvantaged because of their military service. Because of these requirements, we have included a paragraph in sections 831.114 and 842.213 describing voluntary early retirement provisions for employees on military leave.

For the convenience of the reader, we have restated criteria contained in the 5 U.S.C. 8336(d)(2) and 5 U.S.C. 8414(b)(1)(B), in sections 831.114(k)(2) and 842.213(k)(2), respectively. We have removed sections 831.114(h) and 842.213(h) from the interim regulation, and renumbered the final regulation accordingly, because these provisions are contained in the newly added statutory language.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Firefighters, Government employees, Income taxes, Intergovernmental regulations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air Traffic Controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends parts 831 and 842 of title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under sections 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

■ 2. Section 831.114 is revised to read as follows:

§ 831.114 Voluntary early retirement-substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A *specific designee* is defined as a senior official within an agency who has been specifically designated to sign requests for voluntary early retirement authority under a designation from the head of the agency. Examples include a Chief Human Capital Officer, an Assistant Secretary for Administration, a Director of Human Resources Management, or other official.

(b) An agency's request for voluntary early retirement authority must be signed by the head of the agency or by a specific designee.

(c) The request must contain the following information:

(1) Identification of the agency or specified component(s) for which the authority is being requested;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency's personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency's need for voluntary early retirement authority. Examples include separations, transfers, reassignments, and downgradings.

(d) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency's human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(e) Regardless of the method used, the request must include all of the information required by paragraph (c) of this section.

(f) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by

the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period covers multiple years.

(g) After OPM approves an agency's request, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(h) The agency may further limit voluntary early retirement offers based on:

(1) An established opening and closing date for the acceptance of applications that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(i) Within the timeframe specified for its approved voluntary early retirement authority, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved voluntary early retirement authority.

(j) Chapter 43 of title 38, United States Code, requires that agencies treat employees on military duty, for all practical purposes, as though they were still on the job. Further, employees are not to be disadvantaged because of their military service. In accordance with these provisions, employees on military duty who would otherwise be eligible for an offer of voluntary early retirement will have 30 days following their return to duty to either accept or reject an offer of voluntary early retirement. This will be true even if the voluntary early retirement authority provided by OPM has expired.

(k) An employee who separates from the service voluntarily after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the following conditions which are covered in 5 U.S.C. 8336(d)(2):

(i) Has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in section 831.114(b);

(ii) Is serving under an appointment that is not time limited;

(iii) Has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(iv) Is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office:

(A) Such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(B) A significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(C) Identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(v) As determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made based on the following criteria:

(A) 1 or more organizational units;

(B) 1 or more occupational series or levels;

(C) 1 or more geographical locations;

(D) Specific periods;

(E) Skills, knowledge, or other factors related to a position; or

(F) Any appropriate combination of such factors.

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) Except as provided in paragraph (j) of this section, an agency may not offer or process voluntary early retirements beyond the stated expiration date of a voluntary early retirement authority or offer early retirements to employees who are not within the scope of the voluntary early retirement authority approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the condition(s) that formed the basis for the approval of the authority no longer exist.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that the requirements of this subpart are properly being followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–125.

Subpart B—Eligibility

■ 4. Section 842.213 is revised to read as follows:

§ 842.213 Voluntary early retirement-substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring.

(a) A *specific designee* is defined as a senior official within an agency who has been specifically designated to sign requests for voluntary early retirement authority under a designation from the head of the agency. Examples include a Chief Human Capital Officer, an Assistant Secretary for Administration, a Director of Human Resources Management, or other official.

(b) An agency's request for voluntary early retirement authority must be signed by the head of the agency or by a specific designee.

(c) The request must contain the following information:

(1) Identification of the agency or specified component(s) for which the authority is being requested;

(2) Reasons why the agency needs voluntary early retirement authority. This must include a detailed summary of the agency's personnel and/or budgetary situation that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals;

(3) The date on which the agency expects to effect the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(4) The time period during which the agency plans to offer voluntary early retirement;

(5) The total number of non-temporary employees in the agency (or specified component(s));

(6) The total number of non-temporary employees in the agency (or specified component(s)) who may be involuntarily separated, downgraded, transferred, or reassigned as a result of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping;

(7) The total number of employees in the agency (or specified component(s)) who are eligible for voluntary early retirement;

(8) An estimate of the total number of employees in the agency (or specified component(s)) who are expected to retire early during the period covered by the request for voluntary early retirement authority; and

(9) A description of the types of personnel actions anticipated as a result of the agency's need for voluntary early retirement authority. Examples include separations, transfers, reassignments, and downgradings.

(d) OPM will evaluate a request for voluntary early retirement based on:

(1) A specific request to OPM from the agency for voluntary early retirement authority;

(2) A voluntary separation incentive payment implementation plan, as discussed in part 576, subpart A, of this chapter, which must outline the intended use of the incentive payments and voluntary early retirement; or

(3) The agency's human capital plan, which must outline its intended use of voluntary separation incentive payments and voluntary early retirement authority, and the changes in organizational structure it expects to make as the result of projected separations and early retirements.

(e) Regardless of the method used, the request must include all of the information required by paragraph (c) of this section.

(f) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping described by the agency, or the initial portion of that period with a requirement for subsequent information and justification if the period covers multiple years.

(g) After OPM approves an agency's request, the agency must immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(h) The agency may further limit voluntary early retirement offers based on:

(1) An established opening and closing date for the acceptance of applications that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(i) Within the timeframe specified for its approved voluntary early retirement authority, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved voluntary early retirement authority.

(j) Chapter 43 of title 38, United States Code, requires that agencies treat employees on military duty, for all practical purposes, as though they were still on the job. Further, employees are not to be disadvantaged because of their military service. In accordance with these provisions, employees on military duty who would otherwise be eligible for an offer of voluntary early retirement will have 30 days following their return to duty to either accept or reject an offer of voluntary early retirement. This will be true even if the voluntary early retirement authority provided by OPM has expired.

(k) An employee who separates from the service voluntarily after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the following conditions which are covered in 5 U.S.C. 8414(b)(1)(B):

(i) Has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in section 842.213(b);

(ii) Is serving under an appointment that is not time limited;

(iii) Has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(iv) Is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office:

(A) Such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(B) A significant percentage of employees servicing in such agency (or

component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(C) Identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(v) As determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made based on the following criteria:

(A) 1 or more organizational units;

(B) 1 or more occupational series or levels;

(C) 1 or more geographical locations;

(D) Specific periods;

(E) Skills, knowledge, or other factors related to a position; or

(F) Any appropriate combination of such factors.

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) Except as provided in paragraph (j) of this section, an agency may not offer or process voluntary early retirements beyond the stated expiration date of a voluntary early retirement authority or offer early retirements to employees who are not within the scope of the voluntary early retirement authority approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the condition(s) that formed the basis for the approval of the authority no longer exist.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that the requirements of this subpart are properly being followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

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FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1187]

Fair Credit Reporting Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation V, which implements the Fair Credit Reporting Act. The revisions add model notices that financial institutions may use to comply with the notice requirement relating to furnishing negative information contained in section 217 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Section 217 of the FACT Act amends the FCRA to provide that if any financial institution extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. Section 217 defines the term ''financial institution'' to have the same meaning as in the privacy provisions of the Gramm-Leach-Bliley Act. The Board's model notices may be used by all financial institutions, as defined by section 217.

DATES: The rule is effective July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy, Senior Attorney, or David A. Stein, Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; or Thomas E. Scanlon, Counsel, Legal Division, at (202) 452–3594; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2003, the President signed into law the FACT Act, which amends the FCRA. Pub. L. 108–159, 117 Stat. 1952. In general, the FACT Act enhances the ability of consumers to combat identity theft, increases the accuracy of consumer reports, and allows consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, the FACT Act creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

Section 217 of the FACT Act requires that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and (2) furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. Section 217 defines the term ''negative information'' to mean information concerning a customer's delinquencies, late payments, insolvency, or any form of default. The term ''credit'' is defined under the FACT Act to have the same meaning as in section 702 of the Equal Credit Opportunity Act, which defines ''credit'' to mean ''the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or to purchase property or services and defer payment therefor.'' 15 U.S.C. 1691a. The provisions in Section 217 will become effective December 1, 2004. 69 FR 6526, (February 11, 2004).

Section 217 specifies that an institution must provide the required notice to the customer prior to, or no later than 30 days after, furnishing the negative information to a nationwide consumer reporting agency. After providing the notice, the institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. If a financial institution has provided a customer with a notice prior to the furnishing of negative information, the institution is not required to furnish negative information about the customer to a nationwide consumer reporting agency. A financial institution generally may provide the notice about furnishing negative information on or with any notice of default, any billing statement, or any other materials provided to the customer, so long as the notice is clear and conspicuous. Section 217 specifically provides, however, that the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)).

Section 217 also provides a safe harbor for institutions concerning their efforts to comply with the notice requirement. Section 217 provides that a financial institution shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the institution maintained reasonable policies and procedures to comply with the section or the institution reasonably believed that the institution was prohibited by law from contacting the customer.

Under section 217, the term ''financial institution'' is defined broadly to have the same meaning as in section 509 of the Gramm-Leach-Bliley Act (GLB Act), which generally defines financial institution to mean ''any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956,'' whether or not affiliated with a bank. 15 U.S.C. 6809(3). Thus, the term ''financial institution'' includes not only institutions regulated by the Board and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information. 16 CFR 313.3(k), 65 FR 33646, 33655 (May 24, 2000).

Section 217 requires the Board to publish, after notice and comment, a concise model notice not to exceed 30 words in length that financial institutions may, but are not required to, use to comply with the notice requirement. Under section 217, a financial institution shall be deemed to be in compliance with the notice requirement if the institution uses the Board's model notice, or uses the model notice and rearranges its format.

In April 2004, the Board issued the following proposed model notice: ''We [may provide]/[have provided] information to credit bureaus about an insolvency, delinquency, late payment, or default on your account to include in your credit report.'' 69 FR 19123 (April 12, 2004). The Board received approximately 50 comment letters in response to the proposal. Around 40 letters were submitted by financial institutions and their representatives. One letter was received from consumer representatives, two letters from government entities, and six letters from individuals.

II. Comments Received

Comments on the Model Notice

Most commenters suggested that the Board revise the model notice language to enhance the readability and clarity of the disclosure for consumers. In light of these comments and its own analysis, the Board has revised the language of the model notice to make the disclosure more understandable to consumers. As discussed in more detail below, the final rule provides two model notices—one that may be used by a financial institution if the institution provides the notice in advance of providing negative information to a consumer reporting agency, and one that can be used if an institution provides the notice after providing negative information to a consumer reporting agency. The Board found it more useful to craft a precise, focused notice for each situation, rather than providing one model notice for use in both situations.

Several commenters also requested additional guidance from the Board on use of the model notices. Several commenters asked the Board to incorporate into the regulation the safe harbor for use of the model notice that is contained in section 217. The safe harbor in section 217 essentially provides that a financial institution shall be deemed to be in compliance with the notice requirement relating to furnishing negative information if the institution uses the model notice issued by the Board, or uses such model notice and rearranges its format. Several commenters also requested guidance on how financial institutions may rearrange the format of the model notice without losing the safe harbor from liability provided by the model notice. The Board has incorporated the safe harbor into the text of the regulation, and has provided additional guidance on use of the model notices.

Comments on Other Substantive Issues

Many commenters also asked the Board to provide guidance on a number of substantive issues raised by section 217 that are not related to the contents of the model notice. For example, several commenters asked the Board to clarify issues relating to existing customers, such as whether the notice should be given to existing customers, or whether a substantially similar notice previously given to existing customers is sufficient to satisfy the notice requirement. In addition, some commenters asked the Board to clarify the timing of the notice. Consumer groups asked the Board to make clear that the notice may only be sent to consumers about whom there is negative information that the financial institution either intends to send to credit bureaus or has sent to credit bureaus. On the other hand, several industry commenters wanted clarification that the notice may be delivered at any time prior to the furnishing of negative information, and may be included on credit applications, loan closing documents, or with periodic notices (such as a privacy notice).

The final rule does not address substantive issues raised by commenters that are not related to the contents of the model notice. Such issues are beyond the scope of this rulemaking. Under section 217, the Board was given authority to issue model notices, and certain guidance relating to the model notices, but was not given the authority to issue general regulations implementing section 217. Section 621(e) of the FCRA provides the banking agencies (the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision) with the authority to prescribe joint regulations necessary to carry out the purposes of the FCRA, including section 217 which amends the FCRA. 15 U.S.C. 1681s(e). The Board will share with the other banking agencies the comments the Board received on substantive issues not related to the contents of the model notice.

III. Section by Section Analysis

Section 222.1 Purpose, Scope, and Effective Dates

The Board proposed paragraph 222.1(b)(2) to clarify the scope of the Board's Regulation V, which implements the FCRA. Generally, the Board's Regulation V covers the institutions under the Board's jurisdiction. 15 U.S.C. 1681s(e). Nonetheless, the Board proposed paragraph (b)(2) to specify that the Board's model notice in Appendix B relating to furnishing of negative information may be used by all financial institutions (as that term is defined in section 509 of the GLB Act) to comply with the notice requirement contained in section 217 of the FACT Act. The Board received no comments on the proposed paragraph 222.1(b)(2). The Board is adopting this provision with several technical revisions. The Board has revised paragraph (b)(2)(i) to reflect more accurately the institution's under the Board's jurisdiction. In addition, the Board has revised paragraph (b)(2)(ii) to pluralize the reference to model notices.

Appendix B—Model Notice of Furnishing Negative Information

The Board proposed the following model notice that financial institutions may use to comply with the notice requirement under section 217 of the FACT Act: ''We [may provide]/[have provided] information to credit bureaus

about an insolvency, delinquency, late payment, or default on your account to include in your credit report.'' 69 FR 19123 (April 12, 2004).

Model Notice Language

Most commenters suggested that the Board revise the model notice language to enhance the readability and clarity of the disclosure for consumers. Many commenters provided suggested language on how the model notice should be revised to achieve this goal. In light of these comments and its own analysis, the Board has revised the language of the model notice to make the disclosure more useful and more understandable to consumers.

Appendix B provides two model notices. Model Notice B–1 may be used by financial institutions that give the notice prior to furnishing negative information to a consumer reporting agency. This model notice reads: ''We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.'' This model notice has a Flesch readability score of 52.1, and a Flesch-Kincaid grade level score of 9.3. (The proposed model notice has a Flesch readability score of 27.5, and a Flesch-Kincaid grade level score of 12.0.) Model Notice B–2 may be used by financial institutions that give the notice after furnishing negative information to a consumer reporting agency. This model notice reads: ''We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.'' This model notice has a Flesch readability score of 58.3, and a Flesch-Kincaid grade level score of 8.4.

In commenting on the proposed model notice, both consumer groups and industry commenters believed that the terms ''delinquency'' and ''insolvency'' are not readily understandable to consumers. In addition, several industry commenters noted that they were not aware that financial institutions furnished information about ''insolvency'' of a customer to credit bureaus. Several industry commenters suggested that the model notice should simply use the terms ''late payment'' and ''default'' because they believed those terms are understandable to consumers, and would be sufficient to convey to the customer the types of negative information that the furnisher may provide. Consumer groups suggested including the language ''late payments, missed payments, or partial payments, other default or bankruptcy'' as specific examples of the negative information furnished by financial institutions. Model Notices B–1 and B–2 use the terms ''late payment(s),'' ''missed payment(s),'' and ''other default(s).'' The Board believes that these terms are understandable to consumers, and adequately convey to customers the types of negative information that furnishers may provide to consumer reporting agencies.

Several industry commenters also believed that the proposed language may imply to customers that a financial institution only provides information about an ''insolvency, delinquency, late payment, or default'' to a consumer reporting agency. These commenters pointed out that many financial institutions report more than these four types of information to consumer reporting agencies; many institutions furnish both positive and negative information on accounts. These commenters suggested that the Board adopt model notice language that more accurately reflects the nature of a financial institution's likely behavior with respect to furnishing information to consumer reporting agencies. As revised, the Board believes that the language of Model Notice B–1 no longer suggests that a financial institution only provides information about ''insolvency, delinquency, late payment, or default'' to a consumer reporting agency.

Several industry commenters suggested that the Board delete the last clause—''to include in your credit report''—from the proposed model notice because the furnisher of negative information is not responsible for deciding whether such information is, in fact, included in the relevant credit reports. The Board has revised the language of Model Notices B–1 and B–2 so the model notices no longer imply that negative information *will* be included in the credit report. Nonetheless, these model notices still include a reference to a customer's credit report—indicating that negative information *may be* reflected in the customer's credit report. The Board believes that it is important to alert customers to the possible consequences of negative information being furnished to credit bureaus.

Several industry commenters asked the Board to provide multiple model notices that would give financial institutions options from which to choose when providing the required disclosures to customers. The Board believes that the two model notices given in Appendix B are sufficient. The Board notes that financial institutions may, but are not required to, use the model notices issued by the Board to meet the notice requirement contained in section 217.

Consumer groups requested that the Board require financial institutions to take certain steps to the make the disclosure readily noticeable. These groups suggested that the Board require the disclosure to be on the front page of the notice or billing statement, and require it to be in bold face type and in larger print than the information that accompanies it. The Board notes that section 217 requires financial institutions to provide the notice of furnishing negative information in a clear and conspicuous manner. The Board does not believe it is necessary to place additional format requirements on financial institutions that decide to use the model notices to meet the notice requirements.

Safe Harbor and Additional Guidance on Use of Model Notices

Several commenters requested additional guidance from the Board on use of the model notices. Several commenters asked the Board to incorporate into the regulation the safe harbor relating to use of the model notice contained in the statute. In particular, section 217 provides that a financial institution may, but is not required to, use the model notice issued by the Board. Section 217 also provides that a financial institution shall be deemed to be in compliance with the notice requirement relating to furnishing negative information contained in section 217 if the institution uses the model notice issued by the Board, or uses such model notice and rearrange its format. Several commenters believed it would be helpful to include this safe harbor in the text of the regulation, because many examiners and financial institutions use the regulation as a point of reference.

Some commenters also requested guidance on how financial institutions may rearrange the format of the model notices without losing the safe harbor from liability provided by the model notices. In particular, these commenters requested clarification that the critical elements of the model notice's reference to late payment, default, and reporting to a credit bureau may be rearranged or combined with other language and still come within the safe harbor of the model notice, provided that the meaning of the model notice is retained.

In light of these comments and its own analysis, the Board has revised Appendix B to incorporate the safe harbor contained in section 217, and to provide additional guidance on the use of the model notices. In particular,

Appendix B provides that although use of the model notices is not required, a financial institution shall be deemed to be in compliance with the notice requirement if the institution properly uses the model notices in Appendix B. In addition, Appendix B provides that financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. Appendix B provides examples of acceptable changes, including rearranging the order of the references to ''late payment(s)'' and ''missed payment(s),'' or pluralizing the terms ''credit bureau,'' ''credit report'' and ''account'' as used in the model notices. Nonetheless, Appendix B provides that changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that Appendix B provides.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has certified that the final revisions to Regulation V relating to the model notices will not have a significant economic impact on small entities. Section 217 of the FACT Act amends the FCRA to provide that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and (2) furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. Section 217 defines the term ''financial institution'' to have the same meaning as in the privacy provisions of the Gramm-Leach-Bliley Act. Thus, the term ''financial institution'' includes not only institutions regulated by the Board and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information.

The final revisions to Regulation V would provide financial institutions with model notices (provided in Appendix B) that they may use to comply with the notice requirement under section 217 of the FACT Act relating to furnishing negative information. The final revisions to Regulation V also would provide financial institutions with additional guidance on how to use these model notices.

The final revisions to Regulation V relating to the model notices are not expected to have a significant economic impact on small entities. By providing model notices and additional guidance on use of the model notices, the Board has minimized the burden imposed on financial institutions by the notice requirement contained in section 217 of the FACT Act. A financial institution that properly uses the model notices in Appendix B will be deemed to be in compliance with the notice requirement of section 217. The Board also notes that the revisions to Regulation V do not require financial institutions to use the model notices. Financial institutions may, but are not required to, use the model notices in Regulation V to meet the notice requirement contained in section 217.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for this final rule is 7100–0308.

The collection of information involved in this rulemaking is found in section 217 of the FACT Act, Pub. L. 108–159, 117 Stat. 1952. This information is mandatory for financial institutions that furnish negative information to credit bureaus regarding credit extended to customers. The respondents are financial institutions as defined in the privacy provisions of the GLB Act. The term ''financial institution'' includes not only institutions regulated by the Board and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information.

The final revisions to Regulation V would provide financial institutions with model notices (provided in Appendix B) that they may use to comply with the notice requirement under section 217 of the FACT Act relating to furnishing negative information. The final revisions to Regulation V also would provide additional guidance to financial institutions on how to use these model notices.

The estimated annual burden for financial institutions is approximately 240,000 hours. Financial institutions would face a one-time burden to reprogram and update systems to include the new notice requirement. With respect to financial institutions, approximately 30,000 furnish information to consumer reporting agencies. The estimated time to update systems is approximately 8 hours (one business day). In conjunction with the proposed revisions to Regulation V, the Board sought comment on the burden estimate for the proposed changes. The Board did not receive any comments specifically responding to the paperwork reduction analysis published with the proposed rule.

List of Subjects in 12 CFR Part 222

Banks, banking, Holding companies, State member banks.

■ For the reasons set forth in the preamble, the Board amends Regulation V, 12 CFR part 222, as set forth below:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

■ 1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681s; Secs. 3 and 217, Pub. L. 108–159; 117 Stat. 1953, 1986–88.

■ 2. Section 222.1 is amended by adding a new paragraph (b) to read as follows:

Subpart A—General Provisions

§ 222.1 Purpose, scope, and effective dates.

* * * * *

(b) *Scope.*

(1) [reserved] (2) *Institutions covered.* (i) Except as otherwise provided in this paragraph (b)(2), the regulations in this part apply to banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

(ii) For purposes of Appendix B to this part, financial institutions as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809), may use the model notices in Appendix B to this part to comply with the notice requirement in section 623(a)(7) of the

Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(7)).

* * * * *

■ 3. Part 222 is amended by adding and reserving Appendix A, and adding a new Appendix B to read as follows:

Appendix A to Part 222—[Reserved]

Appendix B to Part 222—Model Notices of Furnishing Negative Information

a. Although use of the model notices is not required, a financial institution that is subject to section 623(a)(7) of the FCRA shall be deemed to be in compliance with the notice requirement in section 623(a)(7) of the FCRA if the institution properly uses the model notices in this appendix (as applicable).

b. A financial institution may use Model Notice B–1 if the institution provides the notice prior to furnishing negative information to a nationwide consumer reporting agency.

c. A financial institution may use Model Notice B–2 if the institution provides the notice after furnishing negative information to a nationwide consumer reporting agency.

d. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. The changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that this appendix provides. Acceptable changes include, for example,

1. Rearranging the order of the references to ''late payment(s),'' or ''missed payment(s)''

2. Pluralizing the terms ''credit bureau,'' ''credit report,'' and ''account''

3. Specifying the particular type of account on which information may be furnished, such as ''credit card account''

4. Rearranging in Model Notice B–1 the phrases ''information about your account'' and ''to credit bureaus'' such that it would read ''We may report to credit bureaus information about your account.''

Model Notice B–1

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Model Notice B–2

We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

By order of the Board of Governors of the Federal Reserve System, June 8, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–13290 Filed 6–14–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–65–AD; Amendment 39–13594; AD 2004–09–05]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 501, 550, and 551 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Cessna Model 500, 501, 550, and 551 airplanes. That AD currently requires a one-time inspection of the brake stator disks to determine to what change level they have been modified (if any), and related investigative and corrective actions if necessary. That AD also requires that the existing markings on the piston housing of certain brake assemblies be eliminated. This document corrects the compliance time for the inspection for cracked or broken stator disks on certain airplanes. This correction is necessary to ensure that affected airplanes are given sufficient time to comply with the requirements of this AD.

DATES: Effective June 2, 2004.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of June 2, 2004 (69 FR 23093, April 28, 2004).

FOR FURTHER INFORMATION CONTACT: David Hirt, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: On April 16, 2004, the Federal Aviation Administration (FAA) issued AD 2004–09–05, amendment 39–13594 (69 FR 23093, April 28, 2004), which applies to certain Cessna Model 500, 501, 550, and 551 airplanes. That AD requires a one-time inspection of the brake stator disks to determine to what change level they have been modified (if any), and related investigative and corrective actions if necessary. That AD also requires that the existing markings on the piston housing of certain brake assemblies be eliminated. That AD was prompted by several reports of wheel lockups that appear to be caused by cracked or broken brake stator disks becoming jammed in the brake assembly and preventing rotation. The actions required by that AD are intended to prevent such wheel lockups and consequent jamming of the brake assembly, which may result in reduced directional control or braking performance during landing.

Need for the Correction

We recently obtained information which indicates that the compliance time for the inspection for cracked or broken stator disks on airplanes that do not use thrust reversers was stated incorrectly. Paragraph (b)(2) of the AD specifies that this inspection must be accomplished prior to the accumulation of 200 total landings on the brake assembly, or within 25 landings after the effective date of the AD, whichever is later. However, the compliance time for determining whether the stator disks are subject to this inspection, as stated in paragraph (a) of the AD, is 50 landings or 90 days after the effective date of the AD, whichever is first. The disparity between the compliance times—50 landings after the effective date of the AD for the initial inspection versus 25 landings after the effective date of the AD for the follow-on inspection—could result in certain airplanes being out of compliance with the requirements of paragraph (b)(2) of the AD before that airplane reaches the initial compliance time in paragraph (a) of the AD. To ensure that affected operators are given sufficient time to comply with the requirements of this AD, the grace period in paragraph (b)(2) of the AD should have been 50 landings, rather than 25 landings, after the effective date of the AD.

The FAA has determined that a correction to AD 2004–09–05 is necessary. The correction will revise the grace period portion of the compliance time in paragraph (b)(2) of the AD from 25 landings to 50 landings after the effective date of the AD.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains June 2, 2004.

Since this action only extends the compliance time specified in paragraph (b)(2) of the AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that

notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

■ 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 [Corrected]

■ 2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2004–09–05 Cessna Airplane Company: Amendment 39–13594. Docket 2000–NM–65–AD.

Applicability: Model 500 and 501 airplanes, serial numbers 0001 through 0689 inclusive, and Model 550 and 551 airplanes, serial numbers 0002 through 0733 inclusive; certificated in any category; equipped with BFGoodrich brake assembly part number (P/N) 2–1528–6 or 2–1530–4.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the wheel/tire assembly, which could result in a loss of directional control or braking performance upon landing, accomplish the following:

Inspection of Stator Disks for Change Letter

(a) Within 50 landings or 90 days after the effective date of this AD, whichever is first, inspect the stator disks on the brake assembly to determine if ''CHG AI'' or ''CHG B'' or a higher change letter is impression-stamped on each disk, in accordance with Goodrich Service Bulletin 2–1528–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1528–6); or Goodrich Service Bulletin 2–1530–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4); both Revision 5; both dated February 19, 2003; as applicable. If both disks are stamped with ''CHG AI'' or ''CHG B'' or a higher change letter, no further action is required by this paragraph. A review of airplane maintenance records is acceptable in lieu of an inspection of the stator disks if the change letter of the stator disks can be positively determined from that review.

Inspection for Cracked or Broken Stator Disks

(b) For any stator disk not stamped with ''CHG AI'' or ''CHG B'' or a higher change letter: At the applicable compliance time specified in paragraph (b)(1) or (b)(2) of this AD, perform a detailed inspection for cracked or broken stator disks; in accordance with Goodrich Service Bulletin 2–1528–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1528–6); or Goodrich Service Bulletin 2–1530–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4); both Revision 5; both dated February 19, 2003; as applicable.

(1) For airplanes that use thrust reversers: Inspect prior to the accumulation of 376 total landings on the brake assembly, or within 50 landings after the effective date of this AD, whichever is later.

(2) For airplanes that do not use thrust reversers: Inspect prior to the accumulation of 200 total landings on the brake assembly, or within 50 landings after the effective date of this AD, whichever is later.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Follow-On Actions (No Cracked or Broken Stator Disk)

(c) If no cracked or broken stator disk is found, before further flight, reassemble the brake assembly and, if the piston housing is impression-stamped with the letters ''SB,'' obliterate the existing markings on the piston housing by stamping ''XX'' over the letters ''SB.'' If paragraph E.(3)(a) or E.(3)(b), as applicable, of Goodrich Service Bulletin 2–1528–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1528–6); or Goodrich Service Bulletin 2–1530–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4); both Revision 5; both dated February 19, 2003; as applicable; specifies repetitive inspections, repeat the inspection required by paragraph (b) of this AD at intervals not to exceed those specified in the service bulletin, until paragraph (e) of this AD is accomplished.

Corrective Action (Cracked or Broken Stator Disk)

(d) If any cracked or broken stator disk is found, prior to further flight, replace the brake assembly with a new or serviceable brake assembly; in accordance with Goodrich Service Bulletin 2–1528–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1528–6); or Goodrich Service Bulletin 2–1530–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4); both Revision 5; both dated February 19, 2003; as applicable. If repetitive inspections are required by paragraph (c) of this AD, replacement of all brake assemblies on the airplane with new or serviceable brake assemblies that contain only stator disks stamped with ''CHG AI'' or ''CHG B'' or a higher change letter terminates those inspections.

Replacement of Brake Assembly

(e) When the brake assembly has accumulated 700 total landings since its installation or within 50 landings on the airplane after the effective date of this AD, whichever is later, replace the brake assembly with a new or serviceable brake assembly; in accordance with Goodrich Service Bulletin 2–1528–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1528–6); or Goodrich Service Bulletin 2–1530–32–2 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4); both Revision 5; both dated February 19, 2003; as applicable. If repetitive inspections are required by paragraph (c) of this AD, replacement of all brake assemblies on the airplane with new or serviceable brake assemblies that contain only stator disks stamped with ''CHG AI'' or ''CHG B'' or a higher change letter terminates those inspections.

Parts Installation

(f) As of the effective date of this AD, no person may install a BFGoodrich brake assembly on any airplane unless it has been inspected as specified in paragraph (f)(1) or (f)(2) of this AD, and found to be free of cracked or broken stator disks.

(1) For BFGoodrich brake assembly P/N 2–1528–6: Brake assembly must be inspected in accordance with paragraphs (a), (b), and (c) of this AD, as applicable, in accordance with the service information specified in those paragraphs or BFGoodrich Service Bulletin 2–1528–32–3, dated March 23, 2000.

(2) For BFGoodrich brake assembly P/N 2–1530–4: Brake assembly must be inspected in accordance with paragraphs (a), (b), and (c) of this AD, as applicable, in accordance with the service information specified in those paragraphs or BFGoodrich Service Bulletin 2–1530–32–3, dated March 23, 2000.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service bulletin listed in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision	Date
BFGoodrich Service Bulletin 2–1528–32–3	Original	March 23, 2000.
BFGoodrich Service Bulletin 2–1530–32–3	Original	March 23, 2000.

TABLE 1.—SERVICE BULLETINS INCORPORATED BY REFERENCE—Continued

Service bulletin	Revision	Date
Goodrich Service Bulletin 2–1528–32–2	5	February 19, 2003.
Goodrich Service Bulletin 2–1530–32–2	5	February 19, 2003.

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 2, 2004 (69 FR 23093, April 28, 2004). Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(i) The effective date of this amendment remains June 2, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13336 Filed 6–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30415; Amdt. No. 3098]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 15, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the

conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 4, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective July 8, 2004*

Easton, MD, Easton/Newnam Field, ILS OR LOC/DME RWY 4, Orig
Easton, MD, Easton/Newnam Field, ILS RWY 4, Orig (CANCELLED)
Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 8R, Amdt 22
Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 26L, Amdt 18, ILS RWY 26L (CAT II, III), Amdt 18
Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 8R, Amdt 1
Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 26L, Amdt 1
Houston, TX, George Bush Intercontinental Arpt/Houston, NDB RWY 26L, Amdt 3

** * * Effective August 5, 2004*

Mobile, AL, Mobile Regional, RNAV (GPS) RWY 14, Orig
Mobile, AL, Mobile Regional, RNAV (GPS) RWY 18, Orig
Mobile, AL, Mobile Regional, RNAV (GPS) RWY 32, Orig
Mobile, AL, Mobile Regional, ILS OR LOC RWY 14, Amdt 29
Mobile, AL, Mobile Regional, ILS OR LOC RWY 32, Amdt 6
Mobile, AL, Mobile Regional, NDB RWY 14, Amdt 2C
Greeley, CO, Greeley-Weld County, NDB RWY 34, Orig
Greeley, CO, Greeley-Weld County, ILS OR LOC RWY 34, Amdt 1
Thomson, GA, Thomson-McDuffie County, NDB OR GPS RWY 28, Orig–A (CANCELLED)
Wichita, KS, Wichita Mid-Continent, ILS OR LOC RWY 19L, Orig
Wichita, KS, Wichita Mid-Continent, LOC BC RWY 19L, Amdt 16 (CANCELLED)
Jamestown, KY, Russell County, RNAV (GPS) RWY 17, Orig
Jamestown, KY, Russell County, RNAV (GPS) RWY 35, Orig
Frederick, MD, Frederick Muni, RNAV (GPS) Z RWY 23, Orig–A
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Amdt 2A
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 32, Amdt 1
Hibbing, MN, Chisholm-Hibbing, ILS OR LOC RWY 31, Amdt 12
Hibbing, MN, Chisholm-Hibbing, VOR RWY 31, Amdt 17
Hibbing, MN, Chisholm-Hibbing, RNAV (GPS) RWY 4, Orig
Hibbing, MN, Chisholm-Hibbing, RNAV (GPS) RWY 13, Orig
Hibbing, MN, Chisholm-Hibbing, RNAV (GPS) RWY 22, Orig
Hibbing, MN, Chisholm-Hibbing, RNAV (GPS) RWY 31, Orig
Hattiesburg, MS, Hattiesburg/Bobby L. Chain Muni, RNAV (GPS) RWY 31, Orig
Tunica, MS, Tunica Muni, RNAV (GPS) RWY 17, Orig
Albuquerque, NM, Double Eagle II, RNAV (GPS) RWY 22, Orig
Albuquerque, NM, Double Eagle II, GPS RWY 22, Orig (CANCELLED)
Carlsbad, NM, Cavern City Air Terminal, RNAV (GPS) RWY 14R, Orig
Carlsbad, NM, Cavern City Air Terminal, RNAV (GPS) RWY 21, Orig
Carlsbad, NM, Cavern City Air Terminal, RNAV (GPS) RWY 32L, Orig
Carlsbad, NM, Cavern City Air Terminal, VOR RWY 32L, Amdt 6
Carlsbad, NM, Cavern City Air Terminal, GPS RWY 21, Amdt 1 (CANCELLED)
Carlsbad, NM, Cavern City Air Terminal, VOR/DME RNAV OR GPS RWY 14R, Amdt 2 (CANCELLED)
Elmira, NY, Elmira/Corning Regional, RNAV (GPS) RWY 10, Amdt 1
Elmira, NY, Elmira/Corning Regional, RNAV (GPS) RWY 28, Amdt 2
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Amdt 1B
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 35L, Amdt 1A
Butler, PA, Butler County/KW Scholter Field, ILS OR LOC RWY 8, Amdt 6A
Philadelphia, PA, Philadelphia Intl, ILS OR LOC RWY 9L, Amdt 4A
Cotulla, TX, Cotulla-La Salle County, RNAV (GPS) RWY 13, Orig
Cotulla, TX, Cotulla-La Salle County, RNAV (GPS) RWY 31, Orig
Cotulla, TX, Cotulla-La Salle County, VOR–A, Amdt 12
Chase City, VA, Chase City Muni, NDB OR GPS RWY 36, Amdt 3A, CANCELLED

[FR Doc. 04–13312 Filed 6–14–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9130]

RIN 1545–BA60

Required Distributions From Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning required minimum distributions under section 401(a)(9) for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts. This document also contains a change to the separate account rules in the final regulations concerning

required minimum distributions for defined contribution plans. These final regulations provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

DATES: *Effective Date:* These regulations are effective June 15, 2004.

Applicability Date: These regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at (202) 622–6090.

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend 26 CFR part 1 relating to section 401(a)(9). The regulations provide guidance on the minimum distribution requirements under section 401(a)(9) for plans qualified under section 401(a) and for other arrangements that incorporate the section 401(a)(9) rules by reference. The section 401(a)(9) rules are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and annuities (IRAs) (including Roth IRAs, except as provided in section 408A(c)(5)), section 403(b)(10) for section 403(b) annuity contracts, and section 457(d) for eligible deferred compensation plans.

Section 401(a)(9) provides rules for distributions during the life of the employee in section 401(a)(9)(A) and rules for distributions after the death of the employee in section 401(a)(9)(B). Section 401(a)(9)(A)(ii) provides that the entire interest of an employee in a qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary).

Section 401(a)(9)(C) defines required beginning date for employees (other than 5-percent owners and IRA owners) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. For 5-percent owners and IRA owners, the required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70½, even if the employee has not retired.

Section 401(a)(9)(D) provides that (except in the case of a life annuity) the life expectancy of an employee and the employee's spouse that is used to determine the period over which payments must be made may be redetermined, but not more frequently than annually.

Section 401(a)(9)(E) provides that the term *designated beneficiary* means any individual designated as a beneficiary by the employee.

Section 401(a)(9)(F) provides that, under regulations prescribed by the Secretary, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will be become payable to the surviving spouse upon such child reaching the age of majority (or other designated event permitted under regulations).

Section 401(a)(9)(G) provides that any distribution required to satisfy the incidental death benefit requirement of section 401(a) is a required minimum distribution.

Section 401(a)(9) also provides that, if the employee dies after distributions have begun, the employee's interest must be distributed at least as rapidly as under the method used by the employee.

Section 401(a)(9) further provides that, if the employee dies before required minimum distributions have begun, the employee's interest must be either distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee's death, or distributed within 5 years after the death of the employee. However, under section 401(a)(9)(B)(iv), a surviving spouse may wait until the date the employee would have attained age 70½ to begin taking required minimum distributions.

Comprehensive proposed regulations under section 401(a)(9) were first published in the **Federal Register** on July 27, 1987 (52 FR 28070) (EE–113–82). Those proposed regulations were amended in 1997 (62 FR 67780) (REG–209463–82) to address the limited issue of the rules that apply when a trust is designated as an employee's beneficiary. Comprehensive proposed regulations were reproposed in the **Federal Register** on January 17, 2001 ((66 FR 3928) (REG–130477–00/REG–130481–00)). The 2001 proposed regulations substantially revised and simplified the rules for defined contribution plans but maintained the basic structure for defined benefit plans and requested additional comments on the rules that should apply to those plans. With respect to annuity payments, the 2001 proposed regulations retained the basic structure of the 1987 proposed regulations and the preamble indicated that the IRS and Treasury were continuing to study these rules and specifically requested updated comments on current practices and issues relating to required minimum distributions from annuity contracts. Commentators on the 2001 proposed regulations provided information on the variety of annuity contracts being developed and available as insurance company products for purchase with separate accounts.

Final and temporary regulations relating to required minimum distributions from qualified plans, individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts were published in the **Federal Register** on April 17, 2002 (67 FR 18987). Proposed regulations that cross reference those temporary regulations were published in the Proposed Rules section of the **Federal Register** on April 17, 2002 ((67 FR 18834) (REG–108697–02)). The final and temporary regulations were effective with the 2003 calendar year.

The 2002 regulations finalized the rules for defined contribution plans and the basic rules regarding the determination of the required beginning date, determination of designated beneficiary and other general rules that apply to both defined benefit and defined contribution plans. The 2002 regulations also provided temporary regulations under § 1.401(a)(9)–6T relating to minimum distribution requirements for defined benefit plans and annuity contracts purchased with an employee's account balance under a defined contribution plan. In response to the comments to the 2001 proposed regulations, the temporary regulations significantly expanded the situations in which annuity payments under annuity contracts purchased with an employee's benefit may provide for increasing payments, but this guidance was provided in proposed and temporary form rather than final form in order to give taxpayers an opportunity to comment on these changes.

A public hearing was held on the temporary and proposed regulations on October 9, 2002. At the public hearing, and in comments on the temporary regulations, concerns were raised that

requiring compliance with certain of the rules in the temporary regulations in 2003 would not be appropriate. Many of the comments relate to restrictions on variable annuity payments, and certain other increasing annuity payments, set forth in A–1 of § 1.401(a)(9)–6T. Commentators also requested additional guidance in applying the rule in A–12 of § 1.401(a)(9)–6T that requires the entire interest under an annuity contract to include the actuarial value of other benefits (such as minimum survivor benefits) provided under the contract and that the rule requiring the inclusion of these values be delayed until the guidance is provided. Finally, commentators requested that special consideration be provided to governmental plans.

In response to these comments and in order to provide adequate time to consider the issues raised, the IRS issued Notice 2003–2 (2003–1 C.B. 257) which provided that, pending the issuance of further regulations, plans are permitted to satisfy certain requirements in the 1987 or 2001 proposed regulations with respect to variable annuity payments in lieu of complying with the corresponding requirements in the 2002 temporary regulations, and that the entire interest under an annuity contract (including an annuity described in section 408(b) or section 403(b)) is permitted to be determined as the dollar amount credited to the employee or beneficiary without regard to the actuarial value of any other benefits (such as minimum survivor benefits) that will be provided under the contract. Notice 2003–2 also provided that, pending the issuance of further regulations under section 401(a)(9), governmental plans are only required to satisfy a reasonable and good faith interpretation of section 401(a)(9). Finally, Notice 2003–2 provided that the transitional relief would continue at least through the year in which additional regulations are published, with a later effective date for certain governmental plans.

In response to the comments received, these final regulations make a number of significant modifications to the proposed and temporary regulations and adopt the regulations as modified. They also make a minor modification to the rules in A–2 of § 1.401(a)(9)–8 for separate accounts. These final regulations contain rules relating to minimum distribution requirements for defined benefit plans and annuity contracts purchased with an employee's account balance under a defined contribution plan. For purposes of this discussion of the background of the regulations in this preamble, as well as the explanation of provisions below, whenever the term *employee* is used, it is intended to include not only an employee but also an IRA owner.

Explanation of Provisions

Overview

These final regulations retain the basic rules of the temporary regulations. For example, distributions of an employee's entire interest must be paid in the form of periodic annuity payments for the employee's or beneficiary's life (or the joint lives of the employee and beneficiary) or over a comparable period certain. The payments must be nonincreasing or only increase as provided in the regulations. As provided in the temporary regulations, the permitted increases under these final regulations include: adjustments to reflect increases in the cost of living; any increase in benefits pursuant to a plan amendment; a pop up in payments in the event of the death of the beneficiary or the divorce of the employee and spouse; or return of employee contributions upon an employee's death. In addition, for both annuity contracts purchased from insurance companies and annuities paid from section 401(a) qualified trusts, the regulations allow variable annuities and other regular increases, if certain conditions are satisfied. The regulations also allow changes in distribution form in certain circumstances.

These regulations retain many rules from the temporary regulations without modification. These include, for example, rules regarding: the distribution of benefits that accrue after an employee's first distribution calendar year; the treatment of nonvested benefits; the actuarial increase to an employee's benefit that must be provided if the employee retires after the calendar year in which the employee attains age 70½; and benefits that commence in the form of an annuity prior to an employee's required beginning date.

Incidental Benefit Requirement

The basic purpose of the incidental benefit rule is to ensure that the payments under the annuity are primarily to provide retirement benefits to the employee. These final regulations retain the basic rule in the temporary regulations that, if distributions commence under a distribution option that is in the form of a joint and survivor annuity where the beneficiary is not the employee's spouse, the incidental benefit requirement will not be satisfied unless the payments to the beneficiary as a percentage of the payments to the employee do not exceed the percentage provided in the table in the regulations. The percentage is based on the number of years that the employee's age exceeds the beneficiary's age, and the percentage decreases as the difference between the ages increases. This reflects the fact that the greater the number of years younger a beneficiary is than the employee, the greater the number of years of expected payments that will be made to the beneficiary after the death of the employee. Under the table in the temporary regulations, a plan may not provide a 100 percent survivor benefit to an employee's nonspouse beneficiary under a joint and survivor annuity if the beneficiary is more than 10 years younger than the employee. Some commentators suggested that an adjustment to the table is appropriate if the employee commences distributions before 70½. This is because, in such a case, more payments are expected to be made while the employee is alive.

In response to these comments, the final regulations provide that, if an employee's annuity starting date is at an age younger than age 70, an adjustment is made to the employee/beneficiary age difference. This adjusted employee/beneficiary age difference is determined by decreasing the age difference by the number of years the employee is younger than age 70 at the annuity starting date. The effect of this change is to permit a higher percentage after an employee's death for employees who commence benefits at earlier ages. Thus, for an employee age 55 at the time of the employee's annuity starting date, a joint and 100 percent survivor annuity can be provided if the survivor is not more than 25 years younger than the employee.

Increasing Annuities (Including Acceleration and Cost-of-Living Increases)

These final regulations clarify that a plan may provide an annual increase that does not exceed the increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or the prior year. An eligible cost-of-living index is a consumer price index (CPI) issued by the Bureau of Labor Statistics and based on prices of all items (or all items excluding food and energy), including an index for a population of consumers (such as urban consumers or urban wage earners and clerical workers) or geographic area or areas (such as a given metropolitan area or state).

Under these regulations, a plan may provide for annual cost-of-living increases, or may provide for less frequent cost-of-living increases that are

cumulative since the most recent increase (or the employee's annuity starting date, if later), as long as there is no actuarial increase to reflect having not provided increases in the interim years.

For a plan that provides annual increases, but provides a ceiling on the annual increase, and thus does not allow a full cost-of-living increase in some years, the plan may allow an unused portion of the cost-of-living increase to be provided in a subsequent year when the ceiling exceeds the increase in the CPI for that year and still treat the increase in that subsequent year as an increase that does not exceed an eligible cost-of-living index.

Finally, a plan can provide for annuity payments with a percentage adjustment based on the increase in compensation for the position held by the employee at the time of retirement. However, in the case of a nongovernmental plan, this form of adjustment is only permitted if it is provided under the terms of the plan as in effect on April 17, 2002.

In addition to these permitted increases in the amount of annuity payments, the final regulations retain the rules in the temporary regulations allowing an annuity purchased from an insurance company with an employee's account balance under a defined contribution plan to provide for variable and increasing payments and clarify that these rules apply to an annuity contract purchased from an insurance company by a qualified trust for a defined benefit plan. For an annuity contract purchased from an insurance company, these final regulations retain the rule that the total expected future payments (disregarding any payment increases) as of the annuity starting date must exceed the premium being annuitized. This rule insures that annuity payments start at a high enough amount to prevent inappropriate deferral.

In response to comments asking for more flexibility in the rules relating to changes in distribution amounts from an annuity contract purchased from an insurance company, the final regulations replace the rule permitting partial and complete withdrawals with a broader rule permitting all types of acceleration. The final regulations allow any method that retains the same rate of increase in future payments but results in the total future expected payments under the annuity (disregarding any future payment increases and including the amount of any payment made as a result of the acceleration) being decreased, thereby allowing acceleration in the form of a shorter period as well as through withdrawals. In addition, the requirement that a total withdrawal option be available has been eliminated.

These final regulations also permit defined benefit plans under a qualified trust to provide variable or fixed-rate increasing annuities paid directly from the trust, but the control in the regulations on the rate of increase for these annuities is different. For these annuities, increases in payments solely to reflect better-than-assumed investment performance are permitted but only if the assumed interest rate for calculating the initial level of payments is at least 3 percent. Alternatively, fixed rate increases may be provided but only if the rate of increase is less than 5 percent. Paralleling the payment of the undistributed premium at death, the regulations allow a payment at death to the extent that the payments after annuitization are less than the present value of the employee's accrued benefit as of the annuity starting date calculated using the applicable interest and morality under section 417(e).

The rule allowing an acceleration of payments under an annuity has not been extended to annuity payments from a qualified trust. However, as noted below, such plans are permitted to allow changes in form of distribution in certain specific circumstances as described below. In addition, if distribution is in the form of a joint and survivor annuity, the final regulations allow the survivor to convert the survivor annuity into a lump sum upon the death of the employee.

Permitted Changes in Form of Distribution

Some commentators requested that employees and beneficiaries be permitted to change the form of future distributions in response to changed circumstances, such as upon retirement or death. In response to these comments, the regulations allow an employee or beneficiary to change the form of future distributions in a number of circumstances provided certain conditions are satisfied. First, if distribution is in the form of a period certain only annuity (*i.e.*, an annuity with no life contingency), the individual may change the form of distribution prospectively at any time. The employee or beneficiary also is permitted to change the form of distribution prospectively upon an employee's actual retirement or upon plan termination, regardless of the form of annuity payments before retirement or plan termination. In addition, an employee may change to a qualified joint and survivor annuity in connection with marriage.

In order to make these changes, the future payments must satisfy section 401(a)(9) (as though payments first commenced on the new annuity starting date, treating the actuarial value of the remaining payments as the employee's or beneficiary's entire interest). As a condition to changes in the form of distribution, whether under a period certain only annuity or a life contingent annuity, the stream of payments from the employee's original annuity starting date (both the payments before and after the change in form) must satisfy section 415 using the interest rate assumption and applicable mortality table in effect as of the annuity starting date. In addition, the end point of the new period certain, if any, may not be later the end point available at the original annuity starting date. Furthermore, the plan must treat an individual electing a new form of distribution under these rules as having a new annuity starting date for purposes of sections 415 and 417. Thus, the payments under the new form must satisfy section 415 as of its new annuity starting date based on the applicable interest rate and applicable mortality table for that date, taking into account prior payments. Although not stated, for plans subject to section 411, any form of distribution or change in the form of distribution must not result in an impermissible forfeiture of benefits.

A number of commentators requested that the final regulations provide the rule in prior proposed regulations that allowed minimum distributions from a defined benefit plan to be calculated using the rule for defined contribution plans in § 1.401(a)(9)–5. The primary argument for allowing this level of flexibility in calculating distribution amounts from year to year is to allow employees to adjust to changed circumstances. The rules in these final regulations allowing a change in distribution form upon retirement or plan termination, and at any time when distribution is in the form of a term certain only, address this need.

Value of Guarantees in Determining Account Value Prior to Annuitization

The final regulations retain the basic rule in the temporary regulations that, before annuitization, the defined contribution plan rules apply. For this purpose, an employee's entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial value of any additional benefits (such as survivor benefits in excess of the account balance) that will be provided under the contract. A number of commentators requested guidance on how this actuarial value is

calculated and indicated that, in certain circumstances it would be appropriate to disregard this additional value.

The IRS and Treasury believe that it is generally appropriate to reflect the value of additional benefits under an annuity contract, just as the fair market value of all assets generally must be reflected in valuing an account balance under a defined contribution plan. However, in response to these comments, the final regulations allow the additional benefits to be disregarded when there is a pro-rata reduction in the additional benefits for any withdrawal, provided the actuarial present value of the additional benefits is not more than 20 percent of the account balance. An example is provided that illustrates an acceptable method of determining the value of an additional benefit that is a guaranteed death benefit. In addition, an exception is provided for an additional benefit in the form of a guaranteed return of premiums upon death.

Certain Payments to Children

The final regulations provide rules governing when, pursuant to section 401(a)(9)(F), payment of an employee's accrued benefit to a child may be treated as if such payments were made to a surviving spouse. Under the final regulations, payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving spouse, provided they become payable to the surviving spouse upon cessation of the payments to the child. In addition, for this purpose, a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26, or so long as the child is disabled.

Governmental Plans

A number of commentators raised concerns that governmental plans offer annuity distribution options that are not permitted under the temporary regulations. Most of the suggestions made by commentators on behalf of governmental plans were incorporated into the final regulations, such as expanding the list of acceptable COLAs; permitting lump sum distributions to beneficiaries; and providing for pop-up payments to a surviving spouse after the cessation of payments to a child.

Nevertheless, some substantive changes recommended by or on behalf of governmental plans were not made in the final regulations. In light of the difficulties a governmental plan faces in changing its plan terms (*e.g.*, in some states, the state constitution does not allow elimination of existing distribution options) and the public oversight of such plans, these final regulations provide a grandfather rule under which, in the case of an annuity distribution option provided under the terms of a governmental plan as in effect on April 17, 2002, the plan will not fail to satisfy section 401(a)(9) merely because the annuity payments do not satisfy the requirements set forth in these regulations. However, a grandfathered distribution option must satisfy the statutory requirements of section 401(a)(9), based on a reasonable and good faith interpretation of that section.

This grandfather rule only applies to existing plan provisions. Otherwise, the regulations provide that annuity payments under governmental plans within the meaning of section 414(d) must satisfy the rules for nongovernmental plans. Thus, any new distribution option in a governmental plan or change in a distribution option must comply with the rules applicable to nongovernmental plans under these final regulations.

Separate Accounts Under Defined Contribution Plans

Several comments have been received raising administrative concerns with the rule in the final regulations applicable to defined contribution plans that recognizes separate accounts for purposes of section 401(a)(9) only after the separate account is actually established. In particular, concerns have been raised that, for employees who die late in a calendar year, it is nearly impossible to set up separate accounts by the end of the year so that they can be used to determine required minimum distributions for the year after death. In response to these comments the regulations have been modified to provide that if separate accounts, determined as of an employee's date of death, are actually established by the end of the calendar year following the year of an employee's death, the separate accounts can be used to determine required minimum distributions for the year following the year of the employee's death. Under the separate account rules, post-death investment experience must be shared on a pro-rata basis until the date on which the separate accounts are actually established.

Effective Date

As provided in the temporary and proposed regulations, these final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. However, in order to fulfill the commitment in Notice 2003–2 to allow plans to continue to use certain provisions from the pre-existing proposed regulations and to provide plan sponsors sufficient time to make any adjustments in their plans needed to comply with these regulations, a distribution from a defined benefit plan or annuity contract for calendar years 2003, 2004, and 2005 will not fail to satisfy section 401(a)(9) merely because the payments do not satisfy the rules in these final regulations, provided the payments satisfy section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9). For a plan that satisfies the parallel provisions of the 1987 proposed regulations, the 2001 proposed regulations, the 2002 temporary and proposed regulations, or these final regulations, a distribution will be deemed to satisfy a reasonable good faith interpretation of section 401(a)(9).

For governmental plans, this reasonable good faith standard extends to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.401(a)(9)–6 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Marjorie Hoffman and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel

from the IRS and Treasury participated in the development of these regulations.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for ''§ 1.401(a)(9)–6T'' and adding an entry in numerical order to read, in part, as follows:

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

§ 1.401(a)(9)–6 is also issued under 26 U.S.C. 401(a)(9). * * *

■ **Par. 2.** Remove § 1.401(a)(9)–6T'' and replace it with § 1.401(a)(9)–6'' each time it is used in the sections listed below:

§ 1.401(9)–0
§ 1.401(a)(9)–1 A–2(b)
§ 1.401(a)(9)–2 A–1(c)
§ 1.401(a)(9)–2 A–5
§ 1.401(a)(9)–2 A–6(a)
§ 1.401(a)(9)–3 A–1(a)
§ 1.401(a)(9)–3 A–1(b)
§ 1.401(a)(9)–3 A–6
§ 1.401(a)(9)–4 A–4(a)
§ 1.401(a)(9)–5 A–1(e)
§ 1.401(a)(9)–8 A–2(a)(3)
§ 1.401(a)(9)–8 A–6(b)(2)
§ 1.401(a)(9)–8 A–7
§ 1.401(a)(9)–8 A–8
§ 1.403(b)–3 A–1(c)(3)
§ 1.408–8 A–1(a)
§ 1.408–8 A–1(b)
§ 54.4974–2 A–3(a)
§ 54.4974–2 A–4(b)(2)(i)

■ **Par. 3.** Section 1.401(a)(9)–6 is added to read as follows:

§ 1.401(a)(9)–6 Required minimum distributions for defined benefit plans and annuity contracts.

Q–1. How must distributions under a defined benefit plan be paid in order to satisfy section 401(a)(9)?

A–1. (a) *General rules.* In order to satisfy section 401(a)(9), except as otherwise provided in this section, distributions of the employee's entire interest under a defined benefit plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with A–3 of this section. The interval between payments for the annuity must be uniform over the entire distribution period and must not exceed one year. Once payments have commenced over a period, the period may only be changed in accordance with A–13 of this section. Life (or joint and survivor) annuity payments must satisfy the minimum distribution incidental benefit requirements of A–2 of this section. Except as otherwise provided in this section (such as permitted increases described in A–14 of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

(b) *Life annuity with period certain.* The annuity may be a life annuity (or joint and survivor annuity) with a period certain if the life (or lives, if applicable) and period certain each meet the requirements of paragraph (a) of this A–1. For purposes of this section, if distributions are permitted to be made over the lives of the employee and the designated beneficiary, references to a life annuity include a joint and survivor annuity.

(c) *Annuity commencement.* (1) Annuity payments must commence on or before the employee's required beginning date (within the meaning of A–2 of § 1.401(a)(9)–2). The first payment, which must be made on or before the employee's required beginning date, must be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Similarly, in the case of distributions commencing after death in accordance with section 401(a)(9)(B)(iii) and (iv), the first payment, which must be made on or before the date determined under A–3(a) or (b) (whichever is applicable) of § 1.401(a)(9)–3, must be the payment which is required for one payment interval. Payment intervals are the periods for which payments are received, *e.g.,* bimonthly, monthly, semi-annually, or annually. All benefit accruals as of the last day of the first distribution calendar year must be included in the calculation of the amount of annuity payments for payment intervals ending on or after the employee's required beginning date.

(2) This paragraph (c) is illustrated by the following example:

Example. A defined benefit plan (Plan X) provides monthly annuity payments of $500 for the life of unmarried participants with a 10-year period certain. An unmarried, retired participant (A) in Plan X attains age 70½ in 2005. In order to meet the requirements of this paragraph, the first monthly payment of $500 must be made on behalf of A on or before April 1, 2006, and the payments must continue to be made in monthly payments of $500 thereafter for the life and 10-year period certain.

(d) *Single sum distributions.* In the case of a single sum distribution of an employee's entire accrued benefit during a distribution calendar year, the amount that is the required minimum distribution for the distribution calendar year (and thus not eligible for rollover under section 402(c)) is determined using either the rule in paragraph (d)(1) or the rule in paragraph (d)(2) of this A–1.

(1) The portion of the single sum distribution that is a required minimum distribution is determined by treating the single sum distribution as a distribution from an individual account plan and treating the amount of the single sum distribution as the employee's account balance as of the end of the relevant valuation calendar year. If the single sum distribution is being made in the calendar year containing the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been distributed, the portion of the single sum distribution that represents the required minimum distribution for the employee's first and second distribution calendar years is not eligible for rollover.

(2) The portion of the single sum distribution that is a required minimum distribution is permitted to be determined by expressing the employee's benefit as an annuity that would satisfy this section with an annuity starting date as of the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year, and not eligible for rollover. If the single sum distribution is being made in the calendar year containing the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been made, the benefit must be expressed as an annuity with an annuity starting date as of the first day of the first distribution calendar year and the payments for the first two distribution calendar years would be treated as required minimum distributions, and not eligible for rollover.

(e) *Death benefits.* The rule in paragraph (a) of this A–1, prohibiting increasing payments under an annuity applies to payments made upon the death of an employee. However, for purposes of this section, an ancillary death benefit described in this paragraph (e) may be disregarded in applying that rule. Such an ancillary death benefit is excluded in determining

an employee's entire interest and the rules prohibiting increasing payments do not apply to such an ancillary death benefit. A death benefit with respect to an employee's benefit is an ancillary death benefit for purposes of this A–1 if—

(1) It is not paid as part of the employee's accrued benefit or under any optional form of the employee's benefit; and

(2) The death benefit, together with any other potential payments with respect to the employee's benefit that may be provided to a survivor, satisfy the incidental benefit requirement of § 1.401–1(b)(1)(i).

(f) *Additional guidance.* Additional guidance regarding how distributions under a defined benefit plan must be paid in order to satisfy section 401(a)(9) may be issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

Q–2. How must distributions in the form of a life (or joint and survivor) annuity be made in order to satisfy the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the distribution component of the incidental benefit requirement of § 1.401–1(b)(1)(i)?

A–2. (a) *Life annuity for employee.* If the employee's benefit is paid in the form of a life annuity for the life of the employee satisfying section 401(a)(9) without regard to the MDIB requirement, the MDIB requirement of section 401(a)(9)(G) will be satisfied.

(b) *Joint and survivor annuity, spouse beneficiary.* If the employee's sole beneficiary, as of the annuity starting date for annuity payments, is the employee's spouse and the distributions satisfy section 401(a)(9) without regard to the MDIB requirement, the distributions to the employee will be deemed to satisfy the MDIB requirement of section 401(a)(9)(G). For example, if an employee's benefit is being distributed in the form of a joint and survivor annuity for the lives of the employee and the employee's spouse and the spouse is the sole beneficiary of the employee, the amount of the periodic payment payable to the spouse would not violate the MDIB requirement if it was 100 percent of the annuity payment payable to the employee, regardless of the difference in the ages between the employee and the employee's spouse.

(c) *Joint and survivor annuity, nonspouse beneficiary*—(1) *Explanation of rule.* If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the employee and a beneficiary other than the employee's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the employee's required beginning date will satisfy the conditions of this paragraph (c). The periodic annuity payment payable to the survivor must not at any time on and after the employee's required beginning date exceed the applicable percentage of the annuity payment payable to the employee using the table in paragraph (c)(2) of this A–2. The applicable percentage is based on the adjusted employee/beneficiary age difference. The adjusted employee/beneficiary age difference is determined by first calculating the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in a calendar year. Then, if the employee is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the employee is younger than age 70 on the employee's birthday in the calendar year that contains the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (c) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary.

(2) *Table.*

Adjusted employee/beneficiary age difference	Applicable percentage
10 years or less	100
11	96
12	93
13	90
14	87
15	84
16	82
17	79
18	77
19	75
20	73
21	72
22	70
23	68
24	67
25	66
26	64
27	63
28	62
29	61
30	60
31	59
32	59
33	58
34	57
35	56
36	56
37	55
38	55
39	54
40	54
41	53
42	53
43	53
44 and greater	52

(3) *Example.* This paragraph (c) is illustrated by the following example:

Example. Distributions commence on January 1, 2003 to an employee (Z), born March 1, 1937, after retirement at age 65. Z's daughter (Y), born February 5, 1967, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of $500 a month to Z and upon Z's death of $500 a month to Y, *i.e.*, the projected monthly payment to Y is 100 percent of the monthly amount payable to Z. Accordingly, under A–10 of this section, compliance with the rules of this section is determined as of the annuity starting date. The adjusted employee/beneficiary age difference is calculated by taking the excess of the employee's age over the beneficiary's age and subtracting the number of years the employee is younger than age 70. In this case, Z is 30 years older than Y and is commencing benefit 5 years before attaining age 70 so the adjusted employee/beneficiary age difference is 25 years. Under the table in paragraph (c)(2) of this A–2, the applicable percentage for a 25-year adjusted employee/beneficiary age difference is 66 percent. As of January 1, 2003 (the annuity starting date) the plan does not satisfy the MDIB requirement because, as of such date, the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 66 percent of Z's monthly payment.

(d) *Period certain and annuity features.* If a distribution form includes a period certain, the amount of the annuity payments payable to the beneficiary need not be reduced during the period certain, but in the case of a joint and survivor annuity with a period certain, the amount of the annuity payments payable to the beneficiary must satisfy paragraph (c) of this A–2 after the expiration of the period certain.

(e) *Deemed satisfaction of incidental benefit rule.* Except in the case of distributions with respect to an employee's benefit that include an ancillary death benefit described in paragraph A–1(e) of this section, to the extent the incidental benefit requirement of § 1.401–1(b)(1)(i) requires a distribution, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution incidental benefit requirement of this A–2. If the employee's benefits include an ancillary death benefit described in paragraph A–1(e) of this section, the benefits (including the ancillary death

benefit) must be distributed in accordance with the incidental benefit requirement described in § 1.401–1(b)(1)(i) and the benefits (excluding the ancillary death benefit) must also satisfy the minimum distribution incidental benefit requirement of this A–2.

Q–3. How long is a period certain under a defined benefit plan permitted to extend?

A–3. (a) *Distributions commencing during the employee's life.* The period certain for any annuity distributions commencing during the life of the employee with an annuity starting date on or after the employee's required beginning date generally is not permitted to exceed the applicable distribution period for the employee (determined in accordance with the Uniform Lifetime Table in A–2 of § 1.401(a)(9)–9) for the calendar year that contains the annuity starting date. See A–10 of this section for the rule for annuity payments with an annuity starting date before the required beginning date. However, if the employee's sole beneficiary is the employee's spouse, the period certain is permitted to be as long as the joint life and last survivor expectancy of the employee and the employee's spouse, if longer than the applicable distribution period for the employee, provided the period certain is not provided in conjunction with a life annuity under A–1(b) of this section.

(b) *Distributions commencing after the employee's death.* (1) If annuity distributions commence after the death of the employee under the life expectancy rule (under section 401(a)(9)(B)(iii) or (iv)), the period certain for any distributions commencing after death cannot exceed the applicable distribution period determined under A–5(b) of § 1.401(a)(9)–5 for the distribution calendar year that contains the annuity starting date.

(2) If the annuity starting date is in a calendar year before the first distribution calendar year, the period certain may not exceed the life expectancy of the designated beneficiary using the beneficiary's age in the year that contains the annuity starting date.

Q–4. Will a plan fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased from an insurance company?

A–4. A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased with the employee's benefit by the plan from an insurance company, as long as the payments satisfy the requirements of this section. If the annuity contract is purchased after the required beginning date, the first payment interval must begin on or before the purchase date and the payment required for one payment interval must be made no later than the end of such payment interval. If the payments actually made under the annuity contract do not meet the requirements of section 401(a)(9), the plan fails to satisfy section 401(a)(9). See also A–14 of this section permitting certain increases under annuity contracts.

Q–5. In the case of annuity distributions under a defined benefit plan, how must additional benefits that accrue after the employee's first distribution calendar year be distributed in order to satisfy section 401(a)(9)?

A–5. (a) In the case of annuity distributions under a defined benefit plan, if any additional benefits accrue in a calendar year after the employee's first distribution calendar year, distribution of the amount that accrues in the calendar year must commence in accordance with A–1 of this section beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(b) A plan will not fail to satisfy section 401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under A–5(a) of this section.

Q–6. If a portion of an employee's benefit is not vested as of December 31 of a distribution calendar year, how is the determination of the required minimum distribution affected?

A–6. In the case of annuity distributions from a defined benefit plan, if any portion of the employee's benefit is not vested as of December 31 of a distribution calendar year, the portion that is not vested as of such date will be treated as not having accrued for purposes of determining the required minimum distribution for that distribution calendar year. When an additional portion of the employee's benefit becomes vested, such portion will be treated as an additional accrual. See A–5 of this section for the rules for distributing benefits which accrue under a defined benefit plan after the employee's first distribution calendar year.

Q–7. If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, for what period must the employee's accrued benefit under a defined benefit plan be actuarially increased?

A–7. (a) *Actuarial increase starting date.* If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, in order to satisfy section 401(a)(9)(C)(iii), the employee's accrued benefit under a defined benefit plan must be actuarially increased to take into account any period after age 70½ in which the employee was not receiving any benefits under the plan. The actuarial increase required to satisfy section 401(a)(9)(C)(iii) must be provided for the period starting on the April 1 following the calendar year in which the employee attains age 70½, or January 1, 1997, if later.

(b) *Actuarial increase ending date.* The period for which the actuarial increase must be provided ends on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9).

(c) *Nonapplication to plan providing same required beginning date for all employees.* If, as permitted under A–2(e) of § 1.401(a)(9)–2, a plan provides that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year in which the employee attains age 70½ (regardless of whether the employee is a 5-percent owner) and the plan makes distributions in an amount sufficient to satisfy section 401(a)(9) using that required beginning date, no actuarial increase is required under section 401(a)(9)(C)(iii).

(d) *Nonapplication to governmental and church plans.* The actuarial increase required under this A–7 does not apply to a governmental plan (within the meaning of section 414(d)) or a church plan. For purposes of this paragraph, the term *church plan* means a plan maintained by a church for church employees, and the term *church* means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

Q–8. What amount of actuarial increase is required under section 401(a)(9)(C)(iii)?

A–8. In order to satisfy section 401(a)(9)(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for actuarial increases (described in A–7 of this section) must be no less than: the

actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence under paragraph (a) of A–7 of this section if benefits had commenced on that date; plus the actuarial equivalent of any additional benefits accrued after that date; reduced by the actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date. Actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying section 411.

Q–9. How does the actuarial increase required under section 401(a)(9)(C)(iii) relate to the actuarial increase required under section 411?

A–9. In order for any of an employee's accrued benefit to be nonforfeitable as required under section 411, a defined benefit plan must make an actuarial adjustment to an accrued benefit, the payment of which is deferred past normal retirement age. The only exception to this rule is that generally no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829). The actuarial increase required under section 401(a)(9)(C)(iii) for the period described in A–7 of this section is generally the same as, and not in addition to, the actuarial increase required for the same period under section 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under section 411, the actuarial increase required under section 401(a)(9)(C)(iii) must be provided even during any period during which an employee's benefit has been suspended in accordance with ERISA section 203(a)(3)(B).

Q–10. What rule applies if distributions commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A–1 of this section?

A–10. (a) *General rule.* If distributions commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A–1 of this section, the annuity starting date will be treated as the required beginning date for purposes of applying the rules of this section and § 1.401(a)(9)–2. Thus, for example, the designated beneficiary distributions will be determined as of the annuity starting date. Similarly, if the employee dies after the annuity starting date but before the required beginning date determined under A–2 of § 1.401(a)(9)–2, after the employee's death, the remaining portion of the employee's interest must continue to be distributed in accordance with this section over the remaining period over which distributions commenced. The rules in § 1.401(a)(9)–3 and section 401(a)(9)(B)(ii) or (iii) and (iv) do not apply.

(b) *Period certain.* If, as of the employee's birthday in the year that contains the annuity starting date, the age of the employee is under 70, the following rule applies in applying the rule in paragraph (a) of A–3 of this section. The applicable distribution period for the employee is the distribution period for age 70, determined in accordance with the Uniform Lifetime Table in A–2 of § 1.401(a)(9)–9, plus the excess of 70 over the age of the employee as of the employee's birthday in the year that contains the annuity starting date.

(c) *Adjustment to employee/beneficiary age difference.* See A–2(c)(1) of this section for the determination of the adjusted employee/beneficiary age difference in the case of an employee whose age on the annuity starting date is less than 70.

Q–11. What rule applies if distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A–1 of this section.

A–11.If distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A–1 of this section, distributions will be considered to have begun on the actual commencement date for purposes of section 401(a)(9)(B)(iv)(II). Consequently, in such case, A–5 of § 1.401(a)(9)–3 and section 401(a)(9)(B)(ii) and (iii) will not apply upon the death of the surviving spouse as though the surviving spouse were the employee. Instead, the annuity distributions must continue to be made, in accordance with the provisions of A–1 of this section, over the remaining period over which distributions commenced.

Q–12. In the case of an annuity contract under an individual account plan that has not yet been annuitized, how is section 401(a)(9) satisfied with respect to the employee's or beneficiary's entire interest under the annuity contract for the period prior to the date annuity payments so commence?

A–12. (a) *General rule.* Prior to the date that an annuity contract under an individual account plan is annuitized, the interest of an employee or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the required minimum distribution for any year with respect to that interest is determined under § 1.401(a)(9)–5 rather than this section. See A–1 of § 1.401(a)(9)–5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence and A–2(a)(3) of § 1.401(a)(9)–8.

(b) *Entire interest.* For purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under the annuity contract as of December 31 of the relevant valuation calendar year is treated as the account balance for the valuation calendar year described in A–3 of § 1.401(a)(9)–5. The entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial present value of any additional benefits (such as survivor benefits in excess of the dollar amount credited to the employee or beneficiary) that will be provided under the contract. However, paragraph (c) of this A–12 describes certain additional benefits that may be disregarded in determining the employee's entire interest under the annuity contract. The actuarial present value of any additional benefits described under this A–12 is to be determined using reasonable actuarial assumptions, including reasonable assumptions as to future distributions, and without regard to an individual's health.

(c) *Exclusions.* (1) The actuarial present value of any additional benefits provided under an annuity contract described in paragraph (b) of this A–12 may be disregarded if the sum of the dollar amount credited to the employee or beneficiary under the contract and the actuarial present value of the additional benefits is no more than 120 percent of the dollar amount credited to the employee or beneficiary under the

contract and the contract provides only for the following additional benefits:

(i) Additional benefits that, in the case of a distribution, are reduced by an amount sufficient to ensure that the ratio of such sum to the dollar amount credited does not increase as a result of the distribution, and

(ii) An additional benefit that is the right to receive a final payment upon death that does not exceed the excess of the premiums paid less the amount of prior distributions.

(2) If the only additional benefit provided under the contract is the additional benefit described in paragraph (c)(1)(ii) of this A–14, the additional benefit may be disregarded regardless of its value in relation to the dollar amount credited to the employee or beneficiary under the contract.

(3) The Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) may provide additional guidance on additional benefits that may be disregarded.

(d) *Examples.* The following examples, which use a 5 percent interest rate and the Mortality Table provided in Rev. Rul. 2001–62 (2001–2 C.B. 632), illustrate the application of the rules in this A–12:

Example 1. (i) G is the owner of a variable annuity contract (Contract S) under an individual account plan which has not been annuitized. Contract S provides a death benefit until the end of the calendar year in which the owner attains the age of 84 equal to the greater of the current Contract S notional account value (dollar amount credited to G under the contract) and the largest notional account value at any previous policy anniversary reduced proportionally for subsequent partial distributions (High Water Mark). Contract S provides a death benefit in calendar years after the calendar year in which the owner attains age 84 equal to the current notional account value. Contract S provides that assets within the contract may be invested in a Fixed Account at a guaranteed rate of 2 percent. Contract S provides no other additional benefits.

(ii) At the end of 2008, when G has an attained age of 78 and 9 months the notional account value of Contract S (after the distribution for 2008 of 4.93% of the notional account value as of December 31, 2007) is $550,000, and the High Water Mark, before adjustment for any withdrawals from Contract S in 2008 is $1,000,000. Thus, Contract S will provide additional benefits (*i.e.* the death benefits in excess of the notional account value) through 2014, the year S turns 84. The actuarial present value of these additional benefits at the end of 2008 is determined to be $84,300 (15 percent of the notional account value). In making this determination, the following assumptions are made: on the average, deaths occur mid-year; the investment return on his notional account value is 2 percent per annum; and minimum required distributions (determined without regard to additional benefits under the Contract S) are made at the end of each year. The following table summarizes the actuarial methodology used in determining the actuarial present value of the additional benefit.

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2008	$1,000,000				$550,000
2009	[1] 950,739	[2] $561,000	[3] $555,500	[4] $28,205	532,795
2010	901,983	543,451	538,123	28,492	514,959
2011	853,749	525,258	520,109	28,769	496,490
2012	806,053	506,419	501,454	29,034	477,385
2013	758,916	486,933	482,159	29,287	457,645
2014	712,356	466,798	462,222	29,525	437,273

[1] $1,000,000 death benefit reduced 4.93 percent for withdrawal during 2008.
[2] Notional account value at end of prior year (after distribution) increased by 2 percent return for year.
[3] Average of $550,000 notional account value at end of prior year (after distribution) and $561,000 notional account value at end of current year (before distribution).
[4] December 31, 2008 notional account (before distribution) divided by uniform lifetime table age 79 factor of 19.5.

Year	Survivorship to start of year	Interest discount to end of 2008	Mortality rate during year	Discounted additional benefits within year
2008				
2009	1.00000	.97590	[5] .04426	17,070
2010	.95574	[6] .92943	.04946	[7] 15,987
2011	[8] .90847	.88517	.05519	14,807
2012	.85833	.84302	.06146	13,546
2013	.80558	.80288	.06788	12,150
2014	.75090	.76464	.07477	10,739
				$84,300

[5] One-quarter age 78 rate plus three-quarters age 79 rate.
[6] Five percent discounted 18 months (1.05∧(−1.5)).
[7] Blended age 79/age 80 mortality rate (.04946) multiplied by the $363,860 excess of death benefit over the average notional account value (901,983 less 538,123) multiplied by .95574 probability of survivorship to the start of 2010 multiplied by 18 month interest discount of .92943.
[8] Survivorship to start of preceding year (.95574) multiplied by probability of survivorship during prior year (1–.04946).

(iii) Because Contract S provides that, in the case of a distribution, the value of the additional death benefit (which is the only additional benefit available under the contract) is reduced by an amount that is at least proportional to the reduction in the notional account value and, at age 78 and 9 months, the sum of the notional account value (dollar amount credited to the employee under the contract) and the actuarial present value of the additional death benefit is no more than 120 percent of the notional account value, the exclusion under paragraph (c)(2) of this A–12 is applicable for 2009. Therefore, for purposes

of applying the rules in § 1.401(a)(9)–5, the entire interest under Contract S may be determined as the notional account value (*i.e.* without regard to the additional death benefit).

Example 2. (i) The facts are the same as in (*Example 1* except that the notional account value is $450,000 at the end of 2008. In this instance, the actuarial present value of the death benefit in excess of the notional account value in 2008 is determined to be $108,669 (24 percent of the notional account value). The following table summarizes the actuarial methodology used in determining the actuarial present value of the additional benefit.

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2008	$1,000,000	.....	.....	.....	$450,000
2009	950,739	$459,000	$454,500	$23,077	435,923
2010	901,983	444,642	440,282	23,311	421,330
2011	853,749	429,757	425,543	23,538	406,219
2012	806,053	414,343	410,281	23,755	390,588
2013	758,916	398,399	394,494	23,962	374,437
2014	712,356	381,926	378,181	24,157	357,768

Year	Survivorship to start of year	Interest discount to end of 2008	Mortality rate during year	Discounted additional benefits within year
2008	.....	.....	.....	.....
2009	1.00000	.97590	.04426	$21,432
2010	.95574	.92943	.04946	20,286
2011	.90847	.88517	.05519	19,004
2012	.85833	.84302	.06146	17,601
2013	.80558	.80288	.06788	15,999
2014	.75090	.76464	.07477	14,347
				$108,669

(ii) Because the sum of the notional account balance and the actuarial present value of the additional death benefit is more than 120 percent of the notional account value, the exclusion under paragraph (b)(1) of this A–12 does not apply for 2009. Therefore, for purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under Contract S must include the actuarial present value of the additional death benefit.

Q–13: When can an annuity payment period be changed?

A–13. (a) *In general.* An annuity payment period may be changed in accordance with the provisions set forth in paragraph (b) of this A–13 or in association with an annuity payment increase described in A–14 of this section.

(b) *Reannuitization.* If, in a stream of annuity payments that otherwise satisfies section 401(a)(9), the annuity payment period is changed and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy section 401(a)(9) provided the conditions set forth in paragraph (c) of this A–13 are satisfied, and either—

(1) The modification occurs at the time that the employee retires or in connection with a plan termination;

(2) The annuity payments prior to modification are annuity payments paid over a period certain without life contingencies; or

(3) The annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the employee and a designated beneficiary, the employee's spouse is the sole designated beneficiary, and the modification occurs in connection with the employee becoming married to such spouse.

(c) *Conditions.* In order to modify a stream of annuity payments in accordance with paragraph (b) of this A–13, the following conditions must be satisfied—

(1) The future payments under the modified stream satisfy section 401(a)(9) and this section (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the participant);

(2) For purposes of sections 415 and 417, the modification is treated as a new annuity starting date;

(3) After taking into account the modification, the annuity stream satisfies section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(4) The end point of the period certain, if any, for any modified payment period is not later than the end point available under section 401(a)(9) to the employee at the original annuity starting date.

(d) *Examples.* For the following examples in this A–13, assume that the Applicable Interest Rate throughout the period from 2005 through 2008 is 5 percent and throughout 2009 is 4 percent, the Applicable Mortality Table throughout the period from 2005 to 2009 is the table provided in Rev. Rul. 2001–62 (2001–C.B. 632) and the section 415 limit in 2005 at age 70 for a straight life annuity is $255,344:

Example 1. (i) A participant (D), who has 10 years of participation in a frozen defined benefit plan (Plan W), attains age 70½ in 2005. D is not retired and elects to receive distributions from Plan W in the form of a straight life (*i.e.* level payment) annuity with annual payments of $240,000 per year beginning in 2005 at a date when D has an attained age of 70. Plan W offers non-retired employees in pay status the opportunity to modify their annuity payments due to an associated change in the payment period at retirement. Plan W treats the date of the change in payment period as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

(ii) Plan W determines modifications of annuity payment amounts at retirement such that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using the Applicable Interest Rate and the Applicable Mortality Table as of the date of modification.

(iii) D retires in 2009 at the age of 74 and, after receiving four annual payments of $240,000, elects to receive his remaining distributions from Plan W in the form of an immediate final lump sum payment (calculated at 4 percent interest) of $2,399,809.

(iv) Because payment of retirement benefits in the form of an immediate final lump sum payment satisfies (in terms of form) section 401(a)(9), the condition under paragraph (c)(1) of this A–13 is met.

(v) Because Plan W treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (c)(2) of this A–13 is met.

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $240,000, $240,000, $240,000, $240,000, and $2,399,809. This benefit stream is actuarially equivalent to a straight life annuity at age 70 of $250,182, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A–13 is met.

(vii) Thus, because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and because each of the conditions under paragraph (c) of this A–13 are satisfied, the modification of annuity payments to D described in this example meets the requirements under paragraph (c)(1) of this A–13.

Example 2. The facts are the same as in *Example 1* except that the straight life annuity payments are paid at a rate of $250,000 per year and after D retires the lump sum payment at age 75 is $2,499,801. Thus, after taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $250,000, $250,000, $250,000, $250,000, and $2,499,801. This benefit stream is actuarially equivalent to a straight life annuity at age 70 of $260,606, an amount greater than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the lump sum payment to D fails to satisfy the condition under paragraph (c)(3) of this A–13. Therefore, the lump sum payment to D fails to meet the requirements of this A–13 and thus fails to satisfy the requirements of section 401(a)(9).

Example 3. (i) A participant (E), who has 10 years of participation in a frozen defined benefit plan (Plan X), attains age 70½ and retires in 2005 at a date when his attained age is 70. E elects to receive annual distributions from Plan X in the form of a 27 year period certain annuity (*i.e.*, a 27 year annuity payment period without a life contingency) paid at a rate of $37,000 per year beginning in 2005 with future payments increasing at a rate of 4 percent per year (*i.e.*, the 2006 payment will be $38,480, the 2007 payment will be $40,019 and so on). Plan X offers participants in pay status whose annuity payments are in the form of a term-certain annuity the opportunity to modify their payment period at any time and treats such modifications as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

(ii) Plan X determines modifications of annuity payment amounts such that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using 5 percent and the Applicable Mortality Table as of the date of modification.

(iii) In 2008, E, after receiving annual payments of $37,000, $38,480, and $40,019, elects to receive his remaining distributions from Plan W in the form of a straight life annuity paid with annual payments of $92,133 per year.

(iv) Because payment of retirement benefits in the form of a straight life annuity satisfies (in terms of form) section 401(a)(9), the condition under paragraph (c)(1) of this A–13 is met.

(v) Because Plan X treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (c)(2) of this A–13 is met.

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $37,000, $38,480, $40,019, and a straight life annuity beginning at age 73 of $92,133. This benefit stream is equivalent to a straight life annuity at age 70 of $82,539, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A–13 is met.

(vii) Thus, because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and because each of the conditions under paragraph (c) of this A–13 are satisfied, the modification of annuity payments to E described in this example meets the requirements of this A–13.

Q–14. Are annuity payments permitted to increase?

A–14. (a) *General rules.* Except as otherwise provided in this section, all annuity payments (whether paid over an employee's life, joint lives, or a period certain) must be nonincreasing or increase only in accordance with one or more of the following —

(1) With an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index as defined in paragraph (b) of this A–14 for a 12-month period ending in the year during which the increase occurs or the prior year;

(2) With a percentage increase that occurs at specified times (*e.g.*, at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in paragraph (b) of this A–14 since the annuity starting date, or if later, the date of the most recent percentage increase. However, in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(3) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

(4) To pay increased benefits that result from a plan amendment;

(5) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the employee's death; or

(6) To the extent increases are permitted in accordance with paragraph (c) or (d) of this A–14.

(b) (1) For purposes of this A–14, an eligible cost-of-living index means an index described in paragraphs (b)(2), (b)(3), or (b)(4) of this A–14.

(2) A consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (such as urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (such as a given metropolitan area or state).

(3) A percentage adjustment based on a cost-of-living index described in paragraph (b)(2) of this A–14, or a fixed percentage if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an eligible cost-of-living index, provided it does not exceed the sum of:

(i) The cost-of-living index for that year, and

(ii) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this paragraph (b)(3)(ii)).

(4) A percentage adjustment based on the increase in compensation for the position held by the employee at the time of retirement, and provided under either the terms of a governmental plan within the meaning of section 414(d) or under the terms of a nongovernmental plan as in effect on April 17, 2002.

(c) *Additional permitted increases for annuity payments under annuity contracts purchased from insurance companies.* In the case of annuity payments paid from an annuity contract purchased from an insurance company, if the total future expected payments (determined in accordance with paragraph (e)(3) of this A–14) exceed the total value being annuitized (within the meaning of paragraph (e)(1) of this A–14) , the payments under the annuity will not fail to satisfy the nonincreasing payment requirement in A–1(a) of this section merely because the payments are increased in accordance with one or more of the following —

(1) By a constant percentage, applied not less frequently than annually;

(2) To provide a final payment upon the death of the employee that does not exceed the excess of the total value being annuitized (within the meaning of paragraph (e)(1) of this A–14) over the total of payments before the death of the employee;

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A–14), but only if actuarial gain is measured no less frequently than annually and the resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured); and

(4) An acceleration of payments under the annuity (within the meaning of paragraph (e)(4) of this A–14).

(d) *Additional permitted increases for annuity payments from a qualified trust.* In the case of annuity payments paid under a defined benefit plan qualified under section 401(a) (other than annuity payments under an annuity contract purchased from an insurance company that satisfy paragraph (c) of this section), the payments under the annuity will not fail to satisfy the nonincreasing payment requirement in A–1(a) of this section merely because the payments are increased in accordance with one of the following—

(1) By a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year;

(2) To provide a final payment upon the death of the employee that does not exceed the excess of the actuarial present value of the employee's accrued benefit (within the meaning of section 411(a)(7)) calculated as the annuity starting date using the applicable interest rate and the applicable mortality table under section 417(e) (or, if greater, the total amount of employee contributions) over the total of payments before the death of the employee; or

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A–14), but only if—

(i) Actuarial gain is measured no less frequently than annually;

(ii) The resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured);

(iii) The actuarial gain taken into account is limited to actuarial gain from investment experience;

(iv) The assumed interest used to calculate such actuarial gains is not less than 3 percent; and

(v) The payments are not increasing by a constant percentage as described in paragraph (d)(1) of this A–14.

(e) *Definitions.* For purposes of this A–14, the following definitions apply—

(1) Total value being annuitized means—

(i) In the case of annuity payments under a section 403(a) annuity plan or under a deferred annuity purchased by a section 401(a) trust, the value of the employee's entire interest (within the meaning of A–12 of this section) being annuitized (valued as of the date annuity payments commence);

(ii) In the case of annuity payments under an immediate annuity contract purchased by a trust for a defined benefit plan qualified under section 401(a), the amount of the premium used to purchase the contract; and

(iii) In the case of a defined contribution plan, the value of the employee's account balance used to purchase an immediate annuity under the contract.

(2) Actuarial gain means the difference between an amount determined using the actuarial assumptions (*i.e.*, investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(3) Total future expected payments means the total future payments expected to be made under the annuity contract as of the date of the determination, calculated using the Single Life Table in A–1 of § 1.401(a)(9)–9 (or, if applicable, the Joint and Last Survivor Table in A–3 of in § 1.401(a)(9)–9) for annuitants who are still alive, without regard to any increases in annuity payments after the date of determination, and taking into account any remaining period certain.

(4) Acceleration of payments means a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments. An increase in the payment amount will be treated as an acceleration of payments in the annuity only if the total future expected payments under the annuity (including the amount of any payment made as a result of the acceleration) is decreased as a result of the change in payment period.

(f) *Examples.* Paragraph (c) of this A–14 is illustrated by the following examples:

Example 1. Variable annuity. A retired participant (Z1) in defined contribution plan X attains age 70 on March 5, 2005, and thus, attains age 70½ in 2005. Z1 elects to purchase annuity Contract Y1 from Insurance Company W in 2005. Contract Y1 is a single life annuity contract with a 10-year period certain. Contract Y1 provides for an initial annual payment calculated with an assumed interest rate (AIR) of 3 percent. Subsequent payments are determined by multiplying the prior year's payment by a fraction the numerator of which is 1 plus the actual return on the separate account assets underlying Contract Y1 since the preceding payment and the denominator of which is 1 plus the AIR during that period. The value of Z1's account balance in Plan X at the time of purchase is $105,000, and the purchase price of Contract Y1 is $105,000. Contract Y1 provides Z1 with an initial payment of

$7,200 at the time of purchase in 2005. The total future expected payments to Z1 under Contract Y1 are $122,400, calculated as the initial payment of $7,200 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in A–1 of § 1.401(a)(9)–9. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y1 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z1 from Contract Y1 meet the requirements under paragraph (c)(3) of this A–14.

Example 2. Participating annuity. A retired participant (Z2) in defined contribution plan X attains age 70 on May 1, 2005, and thus, attains age 70½ in 2005. Z2 elects to purchase annuity Contract Y2 from Insurance Company W in 2005. Contract Y2 is a participating single life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the year after the year for which the actuarial gain is measured over the remaining lifetime and period certain, *i.e.*, the period certain ends at the same time as the original period certain. Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual actuarial experience to expected actuarial experience in the past year. The value of Z2's account balance in Plan X at the time of purchase is $265,000, and the purchase price of Contract Y2 is $265,000. Contract Y2 provides Z2 with an initial payment of $16,000 in 2005. The total future expected payments to Z2 under Contract Y2 are calculated as the annual initial payment of $16,000 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in A–1 of § 1.401(a)(9)–9 for a total of $272,000. Because the total future expected payments on the purchase date exceeds the total value used to purchase Contract Y2 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z2 from Contract Y2 meet the requirements under paragraph (c)(3) of this A–14.

Example 3. Participating annuity with dividend accumulation. The facts are the same as in *Example 2* except that the annuity provides a dividend accumulation option under which Z2 may defer receipt of the dividends to a time selected by Z2. Because the dividend accumulation option permits dividends to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in *Example 2*, the dividend accumulation option does not meet the requirements of paragraph (c)(3) of this A–14. Neither does the dividend accumulation option fit within any of the other increases described in paragraph (c) of this A–14. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A–14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 4. Participating annuity with dividends used to purchase additional death benefits. The facts are the same as in *Example 2* except that the annuity provides an option under which actuarial gain under the contract is used to provide additional death benefit protection for Z2. Because this option permits payments as a result of actuarial gain to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in *Example 2*, the option does not meet the requirements of paragraph (c)(3) of this A–14. Neither does the option fit within any of the other increases described in paragraph (c) of this A–14. Accordingly, the addition of the option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A–14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 5. Annuity with a fixed percentage increase. A retired participant (Z3) in defined contribution plan X attains age 70½ in 2005. Z3 elects to purchase annuity contract Y3 from Insurance Company W. Contract Y3 is a single life annuity contract with a 20-year period certain (which does not exceed the maximum period certain permitted under A–3(a) of this section) with fixed annual payments increasing 3 percent each year. The value of Z3's account balance in Plan X at the time of purchase is $110,000, and the purchase price of Contract Y3 is $110,000. Contract Y3 provides Z3 with an initial payment of $6,000 at the time of purchase in 2005. The total future expected payments to Z3 under Contract Y3 are $120,000, calculated as the initial annual payment of $6,000 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y3 and payments only increase as a constant percentage applied not less frequently than annually, distributions received by Z3 from Contract Y3 meet the requirements under paragraph (c)(1) of this A–14.

Example 6. Annuity with excessive increases. The facts are the same as in *Example 5* except that the initial payment is $5,400 and the annual rate of increase is 4 percent. In this example, the total future expected payments are $108,000, calculated as the initial payment of $5,400 multiplied by the period certain of 20 years. Because the total future expected payments are less than the total value of $110,000 used to purchase Contract Y3, distributions received by Z3 do not meet the requirements under paragraph (c) of this A–14 and thus fail to meet the requirements of section 401(a)(9).

Example 7. Annuity with full commutation feature. (i) A retired participant (Z4) in defined contribution Plan X attains age 78 in 2005. Z4 elects to purchase Contract Y4 from Insurance Company W. Contract Y4 provides for a single life annuity with a 10 year period certain (which does not exceed the maximum period certain permitted under A–3(a) of this section) with annual payments. Contract Y4 provides that Z4 may cancel Contract Y4 at any time before Z4 attains age 84, and receive, on his next payment due date, a final payment in an amount determined by multiplying the initial payment amount by a factor obtained from Table M of Contract Y4 using the Y4's age as of Y4's birthday in the calendar year of the final payment. The value of Z4's account balance in Plan X at the time of purchase is $450,000, and the purchase price of Contract Y4 is $450,000. Contract Y4 provides Z4 with an initial payment in 2005 of $40,000. The factors in Table M are as follows:

Age at final payment	Factor
79	10.5
80	10.0
81	9.5
82	9.0
83	8.5
84	8.0

(ii) The total future expected payments to Z4 under ContractY4 are $456,000, calculated as the initial payment of 40,000 multiplied by the age 78 life expectancy of 11.4 provided in the Single Life Table in A–1 of § 1.401(a)(9)–9. Because the total future expected payments on the purchase date exceed the total value being annuitized (*i.e.*, the $450,000 used to purchase Contract Y4), the permitted increases set forth in paragraph (c) of this A–14 are available. Furthermore, because the factors in Table M are less than the life expectancy of each of the ages in the Single Life Table provided in A–1 of § 1.401(a)(9)–9, the final payment is always less than the total future expected payments. Thus, the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A–14.

(iii) As an illustration of the above, if Participant Z4 were to elect to cancel Contract Y4 on the day before he was to attain age 84, his contractual final payment would be $320,000. This amount is determined as $40,000 (the annual payment amount due under Contract Y4) multiplied by 8.0 (the factor in Table M for the next payment due date, age 84). The total future expected payments under Contract Y4 at age 84 before the final payment is $324,000, calculated as the initial payment amount multiplied by 8.1, the age 84 life expectancy provided in the Single Life Table in A–1 of § 1.401(a)(9)–9. Because $320,000 (the total future expected payments under the annuity contract, including the amount of the final payment) is less than $324,000 (the total future expected payments under the annuity contract, determined before the election), the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A–14.

Example 8. Annuity with partial commutation feature. (i) The facts are the same as in *Example 7* except that the annuity provides Z4 may request, at any time before Z4 attains age 84, an ad hoc payment on his next payment due date with future payments reduced by an amount equal to the ad hoc payment divided by the factor obtained from Table M (from *Example* 7) corresponding to Z4's age at the time of the ad hoc payment. Because, at each age, the factors in Table M are less than the corresponding life expectancies in the Single Life Table in A–1 of § 1.401(a)(9)–9, total future expected payments under Contract Y4 will decrease after an ad hoc payment. Thus, ad hoc distributions received by Z4 from Contract Y4 will satisfy the requirements under paragraph (c)(4) of this A–4.

(ii) As an illustration of paragraph (i) of this *Example 8*, if Z4 were to request, on the day before he was to attain age 84, an ad hoc payment of $100,000 on his next payment due date, his recalculated annual payment amount would be reduced to $27,500. This amount is determined as $40,000 (the amount of Z4's next annual payment) reduced by $12,500 (his $100,000 ad hoc payment divided by the Table M factor at age 84 of 8.0). Thus, Z4's total future expected payments after the ad hoc payment (and including the ad hoc payment) are equal to $322,750 ($100,000 plus $27,500 multiplied by the Single Life Table value of 8.1). Note that this $322,750 amount is less than the amount of Z4's total future expected payments before the ad hoc payment ($324,000, determined as $40,000 multiplied by 8.1), and the requirements under paragraph (c)(4) of this A–4 are be satisfied.

Example 9. Annuity with excessive increases. (i) A retired participant (Z5) in defined contribution plan X attains age 70½ in 2005. Z5 elects to purchase annuity Contract Y5 from Insurance Company W in 2005 with a premium of $1,000,000. Contract Y5 is a single life annuity contract with a 20-year period certain. Contract Y5 provides for an initial payment of $200,000, a second payment one year from the time of purchase of $40,000, and 18 succeeding annual payments each increasing at a constant percentage rate of 4.5 percent from the preceding payment.

(ii) Contract Y5 fails to meet the requirements of section 401(a)(9) because the total future expected payments without regard to any increases in the annuity payment, calculated as $200,000 in year one and $40,000 in each of years two through twenty, is only $960,000 (*i.e.*, an amount that does not exceed the total value used to purchase the annuity).

Q–15: Are there special rules applicable to payments made under a defined benefit plan or annuity contract to a surviving child?

A–15: Yes, pursuant to section 401(a)(9)(F), payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. For purposes of the preceding sentence, a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of section 72(m)(7) when the child reaches the age of majority may be treated as having not reached the age of majority so long as the child continues to be disabled. Thus, when payments described in this paragraph A–15 become payable to the surviving spouse because the child attains the age of majority, recovers from a disabling illness, dies, or completes a specified course of education, there is not an increase in benefits under A–1 of this section. Likewise, the age of child receiving such payments is not taken into consideration for purposes of the minimum incidental benefit requirement of A–2 of this section.

Q–16: Will a governmental plan within the meaning of section 414(d) fail to satisfy section 401(a)(9) if annuity payments under the plan do not satisfy this section?

A–16: (a) Except as provided in paragraph (b) of this A–16, annuity payments under a governmental plan within the meaning of section 414(d) must satisfy this section.

(b) In the case of an annuity distribution option provided under the terms of a governmental plan as in effect on April 17, 2002, the plan will not fail to satisfy section 401(a)(9) merely because the annuity payments do not satisfy the requirements A–1 through A–15 of this section, provided the distribution option satisfies section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9).

Q–17: What are the rules for determining required minimum distributions for defined benefit plans and annuity contracts for calendar years 2003, 2004, and 2005?

A–17: A distribution from a defined benefit plan or annuity contract for calendar years 2003, 2004, and 2005 will not fail to satisfy section 401(a)(9) merely because the payments do not satisfy A–1 through A–16 of this section, provided the payments satisfy section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9). For governmental plans, this reasonable good faith standard extends to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

§ 1.401(a)(9)–6T [Removed]

■ **Par. 4.** Section 1.401(a)(9)–6T is removed.

■ **Par. 5.** In § 1.401(a)(9)–8 A–2, the first sentence in paragraph (a)(2) is revised to read as follows:

§ 1.401(a)(9)–8 Special rules.

* * * * *

A–2(a) * * *

(2) If the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). * * *

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Approved: June 1, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–13475 Filed 6–14–04; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in July 2004. Interest assumptions

are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during July 2004, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during July 2004, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during July 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.50 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent an increase (from those in effect for June 2004) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for June 2004.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 129, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
129	7–1–04	8–1–04	3.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 129, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
129	7–1–04	8–1–04	3.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*		*		*	*
July 2004	.0450	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of June, 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–13485 Filed 6–14–04; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–028]

RIN 1625–AA00

Safety Zone; Fireworks Displays in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: Between June 23 and June 29, 2004, the Coast Guard will enforce permanent safety zones for annual fireworks displays in the Captain of the Port Detroit Zone. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: The safety zones in 33 CFR 165.907 will be enforced from June 23, 2004, until June 30, 2004.

FOR FURTHER INFORMATION CONTACT: ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, MI, at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The safety zones in 33 CFR 165.907 were established to provide for the safety of vessels in the vicinity of fireworks displays in the Captain of the Port Detroit Zone. Entry into these zones is prohibited during the following enforcement periods unless authorized by the Captain of the Port or his designee:

(1) The safety zone for the Bay-Rama Fishfly Festival, New Baltimore, MI, will be enforced June 24, 2004, from 9 p.m. to 11 p.m.

(2) The safety zone for the St. Clair Shores Fireworks, St. Clair Shores, MI, will be enforced on June 25, 2004, from 10 p.m. to 10:35 p.m.

(3) The safety zone for the Sigma Gamma Assoc., Grosse Pointe Farms, MI, will be enforced on June 28, 2004, from 8:30 p.m. to 10 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis.

Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM.

Dated: June 2, 2004.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 04–13390 Filed 6–14–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–020]

RIN 1625–AA00

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone in the Atlantic Ocean west of the Ambrose to Hudson Canyon Traffic Lane for high interest vessels during emergency situations. This action is necessary to protect the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during emergency situations onboard high interest vessels. This action is intended to restrict vessel traffic in a portion of the Atlantic Ocean.

DATES: This rule is effective July 15, 2004.

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 (CGD01–03–020) and are available for inspection or copying at room 203, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (68 FR 65427). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a permanent security zone between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21′29.9″ N, 073°44′41.0″ W, thence to 40°21′04.5″ N, 073°45′31.4″ W, thence to 40°15′28.3″ N, 073°44′13.8″ W, thence to 40°15′35.4″ N, 073°43′29.8″ W, thence to 40°19′21.2″ N, 073°42′53.0″ W, (NAD 1983) thence to the point of origin. The security zone will only be used for high interest vessels due to emergency situations onboard the vessel.

On January 31, 2002, a release of MTBE (methyl tertiary-butyl ether) onboard the M/V LEADER required the closure of Anchorage Grounds No. 23–A, 23–B, and 24 in the Narrows. Additionally, from September 11, to September 13, 2002, a radiological anomaly was discovered onboard the M/V PALERMO SENATOR during a vessel boarding. As a result, the vessel was ordered to depart the Port of New York/New Jersey and remain at anchorage for further investigation. To maximize safety, the Captain of the Port New York established a security zone around the anchored vessel.

While these incidents had uneventful conclusions they each posed a significant threat to port infrastructure and the local population. The Coast Guard intends to minimize risk to the Port of New York/New Jersey and the area population by requiring vessels in similar emergency situations to anchor in the security zone while the vessel is inspected and cleared for a safe transit.

The security zone will prevent vessels from transiting a portion of the Atlantic Ocean and is needed to protect vessel operators from the hazards associated with emergency situations onboard vessels that are not authorized within the Port of New York/New Jersey due to conditions that may be dangerous to the Port and the local population. Marine traffic will still be able to transit around the security zone when it is subject to enforcement via already established traffic separation schemes. In cases of emergency, vessels transiting in the traffic separation scheme traffic lanes adjacent to the security zone will be authorized to enter the adjacent separation zone between traffic lanes to avoid immediate danger. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this security zone.

The Coast Guard does not know when the security zone will be enforced as the zone will be used only on an as needed basis. Establishing a permanent security zone by notice and comment rulemaking provided the public the opportunity to comment on the zone, location and size. Coast Guard Activities New York will give notice of the enforcement of the security zone by all appropriate means to provide the widest publicity among the affected segments of the public. This rule has been discussed with the Sandy Hook Pilots Association and they do not feel this zone will interfere with the New York Traffic Separation Scheme. Notifications will be made to the local maritime community by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at *http://www.harborops.com*.

Discussion of Comments and Changes

The Coast Guard received one letter commenting on the proposed rulemaking. The comment recommended that the Coast Guard establish a standardized means for vessels which security zones have been established to transmit the existence of such security zones on their Automatic Identification System (AIS), if installed. The comment also recommended that patrol craft enforcing security zones should transmit information on the security zone on their AIS. This request is beyond the scope of this rulemaking, but we have sent a copy of this letter to the Coast Guard program office responsible for AIS and note that the docket for an AIS request for comments (68 FR 39369, July 1, 2003; Docket number USCG–2003–14878) contains a similar recommendation (*see* item #50) from the same commenter.

We did make one technical change. The wrong paragraph designator was used in the NPRM. It should have been § 165.169(a)(12) instead of § 165.169(a)(7). This final rule contains the correct paragraph designator—33 CFR 165.169(a)(12). Other than the paragraph designator, the regulatory text remains the same as in 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).

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

This finding is based on the minimal time that vessels will be restricted from the zone, and the zone is in an area where the Coast Guard expects insignificant adverse impact on all mariners during periods when the zone is in effect. Vessels may also still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. As stated above, in cases of emergency, vessels transiting in the adjacent traffic lanes will be authorized to enter the adjacent separation zone to avoid immediate danger. This rule has been discussed with the Sandy Hook Pilots Association. The Pilot's Association does not feel that activation of this zone will interfere with the New York Traffic Separation Scheme. Notifications of when the zone will be in effect will also be made to the local maritime community by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at *http://www.harborops.com*.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels, including commercial fisherman, intending to transit, engage in fishing, or anchor in a portion of the Atlantic Ocean during the times this zone is activated.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Commercial Vessel traffic will continue to transit through the New York Traffic Separation Scheme. Recreational, fishing and small commercial vessels will still be able transit around the security zone. Additionally, the periods of time when the zone will be effective are expected to be short and nothing more than minimal interference with commercial fishing operations is expected. The Sandy Hook Pilots Association agrees that activating the zone will not interfere with the traffic separation scheme. In the event that the zone is activated, maritime advisories widely available to users of the Port of New York/New Jersey will be issued by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at *http://www.harborops.com*.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will 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 will 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 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. We received no further requests for assistance from small entities.

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 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 considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying 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; 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. In § 165.169, add a new paragraph (a)(12), revise paragraph (b), and add new paragraph (c) to read as follows:

§ 165.169 Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

(a) * * *

(12) *Approaches to New York, Atlantic Ocean.* The following area is a security zone: All waters of the Atlantic Ocean between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21′29.9″ N, 073°44′41.0″ W, thence to 40°21′04.5″ N, 073°45′31.4″ W, thence to 40°15′28.3″ N, 073°44′13.8″ W, thence to 40°15′35.4″ N, 073°43′29.8″ W, thence to 40°19′21.2″ N, 073°42′53.0″ W, (NAD 1983) thence to the point of origin.

(b) *Regulations.* (1) Entry into or remaining in a safety or security zone is prohibited unless authorized by the Coast Guard Captain of the Port, New York.

(2) Persons desiring to transit the area of a safety or security zone may contact the Captain of the Port at telephone number 718–354–4088 or on VHF channel 14 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) Vessels not actively engaged in authorized vessel to facility transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or his or her designated representative, including on-scene patrol personnel.

(4) The zone described in paragraph (a)(12) of this section is not a Federal Anchorage Ground. Only vessels directed by the Captain of the Port or his or her designated representative to enter this zone are authorized to anchor here.

(5) Vessels do not need permission from the Captain of the Port to transit the area described in paragraph (a)(12) of this section during periods when that security zone is not being enforced.

(c) *Enforcement.* Enforcement periods for the zone in paragraph (a)(12) of this section will be announced through marine information broadcast or other appropriate method of communication. The Coast Guard is enforcing the zone whenever a vessel is anchored in the security zone or a Coast Guard patrol vessel is on-scene.

Dated: May 14, 2004.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 04–13470 Filed 6–14–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest opportunity. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 3, 2004. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2004 regulatory year.

DATES: The fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective May 15, 2004, through July 12, 2004. The fishing schedule for the Glennallen Subdistrict of the Upper Copper River District is effective May 15, 2004, through June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2004 fishing seasons, harvest limits, and methods and means were published on February 3, 2004 (69 FR 5018).

Because this action relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to maintain the viability of salmon stocks in the Copper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. The salmon season is closed until the first open period scheduled for June 3, 2004, at 6 a.m. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Thursday, June 3, 6 a.m.—Sunday, June 6, 11:59 p.m.
Monday, June 7, 12:01 a.m.—Sunday June 13, 11:59 p.m.
Monday, June 14, 12:01 a.m.—Sunday June 20, 11:59 p.m.
Monday, June 21, 12:01 a.m.—Sunday June 27, 11:59 p.m.
Monday, June 28, 12:01 a.m.—Sunday July 4, 11:59 p.m.
Monday, July 5, 12:01 a.m.—Sunday July 11, 11:59 p.m.
Monday, July 12, 12:01 a.m.—Sunday July 18, 11:59 p.m.
Monday, July 19, 12:01 a.m.—Sunday September 30, 11:59 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2004. No deviation from this date is anticipated.

Copper River—Glennallen Subdistrict

In December 2000, the Board adopted a regulatory proposal opening the Glennallen Subdistrict of the Copper River to Federally qualified users May 15. This allowed Federally qualified users to harvest salmon prior to the State subsistence fishing season that opens June 1. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents. Salmon migrating through the Glennallen Subdistrict during this period are likely to spawn in upper river tributaries based on prior studies conducted by the Alaska Department of Fish and Game. In 2003, Federally qualified users harvested approximately 750 salmon in the Glennallen Subdistrict during May. None of this harvest appears to have occurred upstream of the Gakona River.

The State has briefly delayed the opening of the commercial fishery near the mouth of the Copper River predicated on the pre-season forecast. Production from the early portion of the natural run may be weak because of low inriver escapements prior to mid June in brood years 1999 and 2000. If Miles Lake sonar estimates are substantially below the forecasted levels both the State and the Board will reduce the open periods in the Chitina Subdistrict as described in the Copper River Salmon Management Plan (5 AAC 24.360). Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals.

In May of 2004, Federally qualified users that harvest salmon upstream of the Gakona River strongly expressed concerns that their harvest is declining and that one of the causes of this decline is harvest of salmon downstream. Harvest data from 1996 through 2003 suggest that this may be a valid concern. No data regarding early run escapement is available until the Miles Lake sonar is operational and salmon passing the sonar site have arrived within the Glennallen Subdistrict (approximately 3 weeks' travel time). Therefore, this action utilizes a conservative approach and restricts the fishery until data from the Miles Lake sonar are available.

The Glennallen Subdistrict of the Copper River will be closed to the harvest of salmon until June 1, 2004.

Federally qualified users downstream of the Gakona River are not expected to be significantly impacted by this action because they have ample opportunity to harvest additional salmon stocks that enter the Subdistrict later to spawn in tributaries downstream of the Gakona River.

State and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2004. No deviation from this date is anticipated.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform. In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Theodore Matuskowitz drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: May 25, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: May 25, 2004.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 04–13396 Filed 6–14–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–7657–4]

Underground Storage Tank Program: Approved State Program for West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. The Code of Federal Regulations (CFR) contains a codification of EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies the prior approval of the State of West Virginia's (State) underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

DATES: This regulation is effective August 16, 2004, unless EPA receives adverse written comments by the close of business July 15, 2004. If EPA receives adverse written comments, we will publish a timely withdrawal in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of

August 16, 2004 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically through the Internet to: *nino.rose@epa.gov* or by facsimile at (215) 814–3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone: (215) 814–3377.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of RCRA 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a notice in the **Federal Register** announcing its decision to grant approval to West Virginia on September 23, 1997, and approval was effective on February 10, 1998 (63 FR 6667).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of West Virginia's underground storage tank program. This codification reflects the State program in effect at the time EPA granted West Virginia approval, in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the West Virginia program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of West Virginia's underground storage tank program, EPA has added § 282.98 to title 40 of the CFR 40 CFR 282.98(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.98 also describes the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions in approved States. With respect to such an enforcement action, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State-authorized analogues to these provisions. Therefore, West Virginia's inspection and enforcement authorities are not incorporated by reference, nor are they part of West Virginia's approved state program which operates in lieu of the Federal program. These authorities, however, are listed in 40 CFR 282.98(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of West Virginia's enforcement authority. West Virginia's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of the State's underground storage tank program are not part of the federally-approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of Federal enforcement in 40 CFR part 282. Section 282.98 of the codification simply lists for reference and clarity the West Virginia statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the approved program being codified today. ''Broader in scope'' provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Statutory and Executive Order Reviews

This rule only codifies EPA-authorized underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. Executive Order 13132: Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects 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). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. 9. National Technology Transfer Advancement Act—EPA codifies approved State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus,

section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective on August 16, 2004.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: March 25, 2004.

Donald S. Welsh,

Regional Administrator, EPA Region III.

■ For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

■ 2. Subpart B is amended by adding § 282.98 to read as follows:

§ 282.98 West Virginia State-Administered Program.

(a) The State of West Virginia's underground storage tank program is approved in lieu of the Federal program in accordance with Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the West Virginia Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the West Virginia underground storage tank program on September 23, 1997, and approval was effective on February 10, 1998.

(b) West Virginia has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) To retain program approval, West Virginia must revise its approved program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If West Virginia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) West Virginia has final approval for the following elements submitted to EPA in the State's program application for final approval. On September 23, 1997, EPA published notice of approval of the State's program in the **Federal Register**, 62 FR 49620. That approval became effective on February 10, 1998 (63 FR 6667). Copies of West Virginia's program application may be obtained from the West Virginia Department of Environmental Protection, 1356 Hansford Street, Charleston, WV 25301–1401.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) West Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, 1997.

(B) West Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, 1997.

(ii) EPA considered the following statutes in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include:

(*1*) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22–17–5 Powers and duties of director; integration with other acts
Section 22–17–6 Promulgation of rules and standards by director, § 22–17–6.(b)(13)
Section 22–17–12 Confidentiality, § 22–17–12.(b)
Section 22–17–13 Inspections, monitoring, and testing
Section 22–17–15 Administrative orders; injunctive relief; requests for reconsideration
Section 22–17–16 Civil penalties
Section 22–17–17 Public participation
Section 22–17–18 Appeal to environmental quality board
Section 22–17–23 Duplicative enforcement prohibited

(*2*) [Reserved]

(iii) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include:

(*1*) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22–17–6 Promulgation of rules and standards by director, § 22–17–6.(b)(12)
Section 22–17–7 Underground storage tank advisory committee; purpose
Section 22–17–19 Disclosures required in deeds and leases
Section 22–17–20 Appreciation of funds; underground storage tank administrative fund
Section 22–17–21 Leaking underground storage tank response fund

(*2*) [Reserved]

(B) The regulatory provisions include:

(*1*) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 30: Underground Storage Tanks

Section 33–30–3 Certification Requirements for Individuals who Install, Repair, Retrofit, Upgrade, Perform Change-in-Service, Close or Tightness Test Underground Storage Tank Systems
Section 33–30–4 Notification Requirements, § 33–30–4.2.b and 4.4.b
Section 33–30–5 Carriers

(*2*) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 31: Underground Storage Tank Fee Assessments

(*3*) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 32: Underground Storage Tank Insurance Trust Fund

(2) *Statement of legal authority.* (i) ''Attorney General's Statement'', signed by the State Attorney General on June 30, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank

program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of West Virginia to EPA, June 30, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application on July 7, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on July 7, 1997, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the West Virginia Division of Environmental Protection, signed by the EPA Regional Administrator on September 15, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order ''West Virginia'' and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

West Virginia

(a) The statutory provisions include:

(1) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22–17–1 Short title
Section 22–17–2 Declaration of policy and purpose
Section 22–17–3 Definitions
Section 22–17–4 Designation of division of environmental protection as the state underground storage tank program lead agency
Section 22–17–6 Promulgation of rules and standards by director, except § 22–17–6.(b)(12) and (b)(13)
Section 22–17–8 Notification requirements
Section 22–17–9 Registration requirements; undertaking activities without registration
Section 22–17–10 Financial responsibility
Section 22–17–11 Performance standards for new underground storage tanks
Section 22–17–12 Confidentiality, except § 22–17–12.(b)
Section 22–17–14 Corrective action for underground petroleum storage tanks
Section 22–17–22 Underground storage tank insurance fund

(b) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 30: Underground Storage Tanks

Section 33–30–1 General
Section 33–30–2 Adoption of Federal Regulations
Section 33–30–4 Notification Requirements, except § 33–30–4.2.b and 4.4.b

[FR Doc. 04–13281 Filed 6–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–7658–3]

Underground Storage Tank Program: Approved State Program for Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. The Code of Federal Regulations (CFR) contains a codification of EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies the prior approval of the Commonwealth of Virginia's (Commonwealth or State) underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

DATES: This regulation is effective August 16, 2004, unless EPA receives adverse written comments by the close of business July 15, 2004. If EPA receives adverse written comments, we will publish a timely withdrawal in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of August 16, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically through the Internet to: *nino.rose@epa.gov* or by facsimile at (215) 814–3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Phone: (215) 814–3377.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of RCRA, 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a notice in the **Federal Register** announcing its decision to grant approval to Virginia on September 28, 1998, and approval was effective on October 28, 1998 (63 FR 51528).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of Virginia's underground storage tank program. This codification reflects the State program in effect at the time EPA granted Virginia approval, in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Virginia program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of Virginia's underground storage tank program, EPA has added § 282.96 to title 40 of the CFR. 40 CFR 282.96(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.96 also describes the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of

Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions in approved States. With respect to such an enforcement action, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State-authorized analogues to these provisions. Therefore, Virginia's inspection and enforcement authorities are not incorporated by reference, nor are they part of Virginia's approved state program which operates in lieu of the Federal program. These authorities, however, are listed in 40 CFR 282.96(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of Virginia's enforcement authority. Virginia's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of the State's underground storage tank program are not part of the federally-approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of Federal enforcement in 40 CFR part 282. Section 282.96 of the codification simply lists for reference and clarity the Virginia statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the approved program being codified today. ''Broader in scope'' provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Statutory and Executive Order Reviews

This rule only codifies EPA-authorized underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. Executive Order 13132: Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects 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). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. 9. National Technology Transfer Advancement Act—EPA codifies approved State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective on August 16, 2004.

List of Subjects in 40 CFR part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: March 25, 2004.

Donald S. Welsh,

Regional Administrator, EPA Region III.

■ For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

■ 2. Subpart B is amended by adding § 282.96 to read as follows:

§ 282.96 Virginia State-Administered Program.

(a) The State of Virginia's underground storage tank program is approved in lieu of the Federal program in accordance with Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Virginia Department of Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Virginia underground storage tank program on September 28, 1998, and approval was effective on October 28, 1998.

(b) Virginia has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) To retain program approval, Virginia must revise its approved

program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Virginia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Virginia has final approval for the following elements submitted to EPA in the State's program application for final approval. On September 28, 1998, EPA published notice of approval of the State's program in the **Federal Register**, 63 FR 51528. That approval became effective on October 28, 1998. Copies of Virginia's program application may be obtained from the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240–0009.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, 1998.

(B) Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, 1998.

(ii) EPA considered the following statutes in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include:

(1) Code of Virginia, Title 10.1, Subtitle II, Chapter 11.1: Department of Environmental Quality, Article 1: General Provisions

Section 10.1–1186 General powers of the department

(2) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 2: Control Board Generally

Section 62.1–44.14 Chairman; Executive Director; employment of personnel; supervision; budget preparation
Section 62.1–44.15 Powers and duties

(3) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 5: Enforcement and Appeal Procedure

Section 62.1–44.20 Right to entry to obtain information
Section 62.1–44.21 Information to be furnished to Board
Section 62.1–44.21 Private rights not affected
Section 62.1–44.23 Enforcement by injunction
Section 62.1–44.23:1 Intervention of Commonwealth in actions involving surface water withdrawals
Section 62.1–44.24 Testing validity of regulations; judicial review
Section 62.1–44.25 Right to hearing
Section 62.1–44.26 Hearings
Section 62.1–44.27 Rules of evidence in hearings
Section 62.1–44.28 Decisions of the Board in hearings pursuant to § 62.1–44.15 and 62.1–44.25
Section 62.1–44.29 Judicial review
Section 62.1–44.30 Appeal to Court of Appeals

(4) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 6: Offenses and Penalties

Section 62.1–44.31 Violation of special order or certificate or failure to cooperate with Board
Section 62.1–44.32 Penalties

(iii) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law

Section 62.1–44.34:8 Definitions, ''Aboveground storage tank'' and ''Regulated substance''

(2) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 10: Petroleum Storage Tank Fund

Section 62.1–44.34.10 Definitions, ''Aboveground storage tank'' and ''Regulated substance''
Section 62.1–44.34:13 Levy of fee for Fund maintenance

(B) The regulatory provisions include Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks—Technical Standards and Corrective Action Requirements

9 VAC 25–580–10 Definitions, ''Underground storage tank'' includes heating oil tanks of greater than 5,000 gallon capacity and ''Regulated substance''
9 VAC 25–580–130 General requirements for all petroleum and hazardous substance UST systems, heating oil tanks of greater than 5,000 gallon capacity
9 VAC 25–580–290 Corrective action plan (CAP) permit

(2) *Statement of legal authority.* (i) ''Attorney General's Statement,'' signed by the State Attorney General on July 14, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Virginia to EPA, July 14, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application on July 15, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on July 15, 1998, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Virginia Department of Environmental Quality, signed by the EPA Regional Administrator on September 17, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order ''Virginia'' and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Virginia

(a) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law

Article 9: Storage Tanks

Section 62.1–44.34:8 Definitions, except ''Aboveground storage tank'' and ''Regulated substance''
Section 62.1–44.34:9 Powers and duties of Board

Article 10: Petroleum Storage Tank Fund

Section 62.1–44.34:10 Definitions, except ''Aboveground storage tank'' and ''Regulated substance''

Section 62.1–44.34:11 Virginia Petroleum Storage Tank Fund
Section 62.1–44.34:12 Financial responsibility

(b) The regulatory provisions include:

(1) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks—Technical Standards and Corrective Action Requirements

Part I: Definitions, Applicability, and Interim Prohibition

9 VAC 25–580–10 Definitions, except ''Underground storage tank'' includes heating oil tanks of greater than 5,000 gallon capacity and ''Regulated substance''
9 VAC 25–580–20 Applicability
9 VAC 25–580–30 Interim prohibition for deferred UST systems
9 VAC 25–580–40 Permitting and inspection requirements for all UST systems

Part II: UST Systems: Design, Construction, Installation, and Notification

9 VAC 25–580–50 Performance standards for new UST systems
9 VAC 25–580–60 Upgrading of existing UST systems
9 VAC 25–580–70 Notification requirements
9 VAC 25–580–80 Spill and overfill control
9 VAC 25–580–90 Operation and maintenance of corrosion protection
9 VAC 25–580–100 Compatibility
9 VAC 25–580–110 Repairs allowed

Part III: General Operating Requirements

9 VAC 25–580–120 Reporting and recordkeeping

Part IV: Release Detection

9 VAC 25–580–130 General requirements for all petroleum and hazardous substance UST systems, except heating oil tanks of greater than 5,000 gallon capacity
9 VAC 25–580–140 Requirements for petroleum UST systems
9 VAC 25–580–150 Requirements for hazardous substance UST systems
9 VAC 25–580–160 Methods of release detection for tanks
9 VAC 25–580–170 Methods of release detection for piping
9 VAC 25–580–180 Release detection recordkeeping

Part V: Release Reporting, Investigation, and Confirmation

9 VAC 25–580–190 Reporting of suspected releases
9 VAC 25–580–200 Investigation due to off-site impacts
9 VAC 25–580–210 Release investigation and confirmation steps
9 VAC 25–580–220 Reporting and cleanup of spills and overfills

Part VI: Release Response and Corrective Action for UST Systems Containing Petroleum for Hazardous Substances

9 VAC 25–580–230 General
9 VAC 25–580–240 Initial response
9 VAC 25–580–250 Initial abatement measures and site check
9 VAC 25–580–260 Site characterization
9 VAC 25–580–270 Free product removal
9 VAC 25–580–280 Corrective action plan
9 VAC 25–580–300 Public participation
9 VAC 25–580–310 Temporary closure

Part VII: Out-of-Service UST Systems and Closure

9 VAC 25–580–320 Permanent closure and changes-in-service
9 VAC 25–580–330 Assessing the site at closure or change-in-service
9 VAC 25–580–340 Applicability to previously closed UST systems
9 VAC 25–580–350 Closure records

Part VIII: Delegation

9 VAC 25–580–360 Delegation of authority
Appendix I: Virginia Underground Storage Tank Notification Forms
Appendix II: Statement for Shipping tickets and Invoices

(2) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 590: Petroleum Underground Storage Tank Financial Responsibility Requirements

9 VAC 25–590–10 Definitions
9 VAC 25–590–20 Applicability
9 VAC 25–590–30 Compliance dates
9 VAC 25–590–40 Amount and scope of financial responsibility requirement
9 VAC 25–590–50 Allowable mechanisms and combinations of mechanisms
9 VAC 25–590–60 Financial test of self-insurance
9 VAC 25–590–70 Guarantee
9 VAC 25–590–80 Insurance and group self-insurance pool coverage
9 VAC 25–590–90 Surety bond
9 VAC 25–590–100 Letter of credit
9 VAC 25–590–110 Trust fund
9 VAC 25–590–120 Standby trust fund
9 VAC 25–590–130 Substitution of financial assurance mechanisms by owner and operator
9 VAC 25–590–140 Cancellation or nonrenewal by a provider of financial assurance
9 VAC 25–590–150 Reporting by owner or operator
9 VAC 25–590–160 Recordkeeping
9 VAC 25–590–170 Drawing on financial assurance mechanism
9 VAC 25–590–180 Release from the requirements
9 VAC 25–590–190 Bankruptcy or other incapacity of owner, operator or provider of financial assurance
9 VAC 25–590–200 Replenishment of guarantees, letters of credit or surety bonds
9 VAC 25–590–210 Virginia Petroleum Storage Tank Fund
9 VAC 25–590–220 Notices to the State Water Control Board
9 VAC 25–590–230 Delegation of authority
9 VAC 25–590–240 Lender liability
9 VAC 25–590–250 Local government financial responsibility demonstration
9 VAC 25–590–260 Word or phrase substitutions
Appendix I: Letter from Chief Financial Officer
Appendix II: Guarantee
Appendix III: Endorsement
Appendix IV: Certificate of Insurance
Appendix V: Performance Bond
Appendix VI: Irrevocable Standby Letter of Credit
Appendix VII: Trust Agreement
Appendix VIII: Certification of Acknowledgment
Appendix IX: Certification of Financial Responsibility
Appendix X: Certification of Valid Claim
Appendix XI: Letter from Chief Financial Officer (short form)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4168–02; I.D. 122303G]

RIN 0648–AP95

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Rebuilding Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Secretarial Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Secretarial Amendment 1). Secretarial Amendment 1 was prepared by the Secretary of Commerce and the Gulf of Mexico Fishery Management Council (Council) pursuant to the rebuilding requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule establishes a quota for red grouper, provides for closure of the entire shallow-water grouper fishery when either the shallow-water grouper quota or the red grouper quota is reached, establishes a bag limit of two red grouper per person per day, reduces the shallow-water grouper quota, reduces the deep-water grouper quota, and establishes a quota for tilefishes. In addition, for red grouper in the Gulf of Mexico, Secretarial Amendment 1 establishes a 10–year stock rebuilding plan, biological reference points, and stock status determination criteria consistent with the requirements of the Magnuson-Stevens Act. This final rule is designed to end overfishing and rebuild the red grouper resource.

DATES: This final rule is effective July 15, 2004.

ADDRESSES: Copies of the regulatory impact review (RIR) and the final regulatory flexibility act analysis (FRFA) are available from NMFS, Southeast Regional Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Council. The FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On January 8, 2004 (69 FR 1278), NMFS published a notice announcing the availability of Secretarial Amendment 1 and requested comments on its contents. On February 20, 2004 (69 FR 7898), NMFS published a proposed rule to implement Secretarial Amendment 1 and requested comments through April 20, 2004 (69 FR 7898, February 20, 2004). NMFS adopted Secretarial Amendment 1 on May 28, 2004. The rationale for the measures in Secretarial Amendment 1 is provided in the amendment and in the preamble to the February 20, 2004 (69 FR 7898), proposed rule and is not repeated here.

Comments and Responses

NMFS received 17 comments on Secretarial Amendment 1 and three comments on the proposed rule in addition to a petition signed by 66 commercial fishermen on the proposed rule. Additionally, two Council members submitted a minority report objecting to various aspects of Secretarial Amendment 1. A summary of those comments and NMFS' responses to those comments follows.

Comment 1: Several comments were received that objected to the establishment of a 2–fish red grouper recreational bag limit (within the aggregate 5–fish grouper bag limit).

Response: Setting a 2–fish red grouper recreational bag limit (out of the aggregate 5–fish grouper bag limit) is projected to reduce the harvest in the recreational sector by 9 percent and is necessary to accomplish rebuilding goals without reallocating harvest. Although this reduction is slightly less than the 9.4–percent reduction sought by NMFS, the percent difference is not significant since the recreational sector only accounted for 19 percent of the total red grouper harvest during 1999–2001. Further, according to a NMFS bag limit analysis conducted in 2001 on angler trips where red grouper were caught, the average number of red grouper taken per angler trip was only 1.2 fish, and only 6 percent of the angler trips caught more than two red grouper. The effect of the bag limit on this 6 percent of angler trips will achieve the above-mentioned 9 percent harvest reduction. However, overall, a reduction in the recreational bag limit will have little impact on most recreational fishermen. A bag limit reduction also eliminates the necessity for a closed season, which would result in more negative impacts on the for-hire sector, because trip cancellations are more likely to occur under a closed season than under a reduced bag limit.

Comment 2: Several comments recommended a prohibition on longlines as allowable gear in the commercial grouper fishery or movement of the longline gear boundary to the 50–fathom (91.4–m) depth contour.

Response: A prohibition on the use of longlines as allowable gear, and the subsequent reduction in red grouper landings of approximately 60 percent attributed to that sector, is unnecessary to rebuild the stock within 10 years. Further, a prohibition on longlines as allowable gear would disproportionally affect one sector of the commercial grouper fishery, i.e., longline fishermen, by allowing the vertical line and trap sectors of the fishery to harvest a greater proportion of the resource. Such action would have dire economic consequences for the longline sector and result in severe economic disruption on those coastal fishing communities dependent on this segment of the commercial fishery. Additionally, such action could result in the loss of some onshore processing infrastructure which could have negative economic impacts on other sectors of the commercial grouper fishery that require these processing facilities. Movement of the commercial longline gear boundary to the 50–fathom (91.4–m) depth contour, even with an estimated 60–80 percent shift in effort by longline fishermen to vertical line gear, would reduce the harvest of red grouper by approximately 38–43 percent. Because only a 9.4–percent reduction is necessary, these actions would be unnecessarily restrictive for rebuilding the red grouper stock and could lead to greater short-term socioeconomic loss from forgone yield.

Comment 3: One comment recommended reducing the commercial quota for shallow-water grouper by 50 percent.

Response: The measures implemented by this rule reduce the shallow-water grouper commercial quota to account for the required 9.4–percent reduction in the red grouper component of the quota which is necessary to end overfishing and rebuild the red grouper stock. Reducing the shallow-water grouper quota by 50 percent would be unnecessarily restrictive for rebuilding the red grouper stock and would lead to greater short-term socioeconomic loss from forgone yield.

Comment 4: One comment was received from the Council that recommended establishing a single commercial trip limit of 4,000 lb (1,814 kg) for shallow-water grouper if 75 percent of the shallow-water grouper quota is reached by September 30, and a petition submitted by commercial fishermen recommended a 5,500–lb (2,495–kg) trip limit year-round for the commercial grouper fishery.

Response: In an earlier draft of Secretarial Amendment 1, trip limits were proposed to help achieve the required 9.4–percent reduction in red grouper landings and to slow the commercial harvest, thereby providing for an extended open season. Landings data for the commercial shallow-water grouper fishery indicated that the shallow-water grouper quota was exceeded in 2000 and 2001. Thus, trip limits were proposed as a management measure to help achieve the required reduction in fishing mortality and control fishing effort to allow for an extended season. The Southeast Fisheries Science Center (SEFSC) recently recalculated the shallow-water grouper landings using an updated conversion factor which showed that the shallow-water grouper quota had only been exceeded by 6,500 lb (2,948 kg) in 2001. Therefore, alternatives for year-round trip limits were determined by NMFS to be unnecessary at this time to ensure an expanded season. Additionally, establishment of a trip limit may encourage effort shifting from one sector of the fishery to another sector with a higher trip limit, i.e., vertical line to longline, with a subsequent increase in fishing mortality.

NMFS conducted an economic analysis for a single commercial trip limit of 4,000 lb (1,814 kg) for shallow-water grouper if 75 percent of the shallow-water grouper quota is reached by September 30. The agency concluded that such action will not prevent a quota closure since the red grouper quota under this scenario, based on 1999 through 2001 landings data, is projected to be reached by late November or early December, which is similar to the

projected closure date under the proposed commercial quotas.

Anecdotal information received from several fishing organizations indicates that an unknown number of large highly migratory species longline vessels have entered the shallow-water grouper fleet in 2004. Effort by these larger vessels, which are capable of deploying longline gear of lengths substantially greater than gear used in the existing fleet, could increase fishing mortality rates on both the red grouper and shallow-water grouper stocks, thus potentially reducing the fishing season. NMFS will monitor landings through the existing shallow-water grouper quota monitoring program. If landings of either red grouper or other shallow-water grouper species have increased beyond projections for the 2004 fishing year, the Council or NMFS may elect to implement trip limits as an additional management measure.

Comment 5: One non-governmental organization (NGO) stated that the recommended reduction in fishing mortality is not sufficient to address overfishing and rebuild the red grouper stock.

Response: Secretarial Amendment 1 is based on the best available scientific information and accordingly will establish a 10–year red grouper rebuilding plan, structured in 3–year intervals, that would end overfishing and rebuild the stock to maximum sustainable yield (MSY). The rebuilding plan seeks to achieve a 9.4–percent reduction in the recreational and commercial harvest of red grouper, relative to the average landings for 1999–2001, during the first 3 years of the 10–year rebuilding plan. The appropriate measures for the subsequent 3–year intervals, consistent with the overall provisions of the rebuilding plan, would be determined based on the latest stock assessments available at that time. Secretarial Amendment 1 also includes measures designed to protect other shallow-water grouper, deep-water grouper, and tilefishes from any potential shift in fishing mortality that might result from implementation of the red grouper rebuilding plan.

Comment 6: One comment from an NGO stated that the use of the 1999–2001 time frame for establishing commercial quota baselines, and the de facto allocation for the recreational fishery, is both scientifically risky and inherently unfair to the recreational sector. Additionally, a minority report submitted by two Council members stated that the 6.56 million-lb (2.95 million-kg) allowable biological catch (ABC) for red grouper is too high.

Response: The Council decided to base its harvest reduction strategy on the baseline years 1999–2001 rather than 1990–2000 because the fishery is currently influenced by the strong 1996 red grouper year-class, and will likely continue to be influenced by it for the next 3 years of the rebuilding plan. A new stock assessment will be prepared and a new ABC selected for the second and subsequent 3–year intervals.

The commercial-to-recreational ratio of red grouper caught during 1990–2000 was 76:24, little changed from the 1986–1989 pre-regulatory ratio of 75:25. However, in recent years (1999–2001) the commercial-to-recreational ratio has shifted to 81:19. There are two likely reasons for this shift. First, in 2000, differential gag minimum size limits were implemented (24 inches (61 cm) commercial, 22 inches (56 cm) recreational), which allowed the recreational sector to focus more on gag. In fact, the recreational proportion of gag harvest increased in 1999–2001 compared to 1990–2000. Second, the strong 1996 year-class of red grouper entered the fishery around 1999. Since commercial sector catches predominately were red grouper while the recreational sector catches predominately were gag, this year-class provides more of a boost to commercial harvest than to recreational harvest. Single-species grouper allocations are not specified in Reef Fish Amendment 1, and the current amendment does not attempt to address the question of single-species grouper allocations. Instead, the current amendment achieves the needed reductions in red grouper harvest by applying the same percentage reductions to each sector, thus effectively maintaining allocations at current levels.

The RFSAP strongly recommended a constant F_{MSY} fishing mortality rate for red grouper with an ABC range of 6.59 to 7.63 million lb (2.99 to 3.46 million kg, respectively) in 2004. Further, the RFSAP also recommended that if the Council decided to take a more conservative approach and began to manage red grouper towards B_{OY}, a constant F_{OY} yield of 6.14 to 6.59 million lb (2.79 to 2.99 million kg) is recommended for 2004. The recommended ABC of 6.56 million lb (2.98 million kg) for the first 3–year interval of the rebuilding plan is mid-range of these high and low end values recommended by the RFSAP. This allows the stock to be adjusted in 3–year increments, rather than every year. This strategy allows harvest to increase in a stepwise fashion as the stock recovers.

Classification

The Administrator, Southeast Region, NMFS, determined that Secretarial Amendment 1 is necessary for the conservation and management of the Gulf reef fish fishery and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA that describes the economic impact this rule is expected to have on small entities. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rulemaking. This rule will: establish red grouper biological reference points and stock status criteria; adopt a 10–year red grouper rebuilding plan based on a 3–year interval rebuilding strategy that will include a 9.4–percent reduction in total red grouper harvests for the first 3–year interval; adjust the shallow-water grouper quota by an amount equal to the reduction in the red grouper quota; set the recreational bag limit at two red grouper out of the five aggregate grouper bag limit per person; close the commercial shallow-water grouper fishery when the commercial red grouper quota or the shallow-water grouper quota is reached, whichever comes first; reduce the deep-water grouper quota; and establish a tilefish quota.

The primary objective of this rule is to optimize the net benefits to the Nation of the shallow-water grouper stocks by rebuilding the red grouper component to a stock level capable of supporting optimum yield.

No comments were received regarding the economic impact of this rule. Therefore, no changes were made in the final rule as a result of such comments.

This rule contains no changes in recordkeeping or compliance requirements.

This rule will impact both the commercial and recreational participants that traditionally harvest shallow-water grouper species and dealers who receive these species from commercial harvesters.

There are currently approximately 1,204 active commercial reef fish permits and an unknown number of other permits in the process of being renewed. Examination of 2000 logbook data showed that of vessels with commercial reef fish permits, 782 vessels in Florida and 207 in other Gulf states landed reef fish with vertical line gear in 2000. An additional 155 vessels in Florida and 33 in other Gulf states

were identified as having landed reef fish using longline gear in 2000. Furthermore, 55 vessels, all in Florida, reported landing reef fish using fish traps. For all vessels landing reef fish, a total of 546 vessels participate in the shallow-water grouper fishery on a consistent basis. Of these vessels, 138 used longline gear, 353 used vertical line gear, and 55 used fish traps. Within the commercial red grouper fishery, longline gear accounted for 59 percent of landings, handline gear accounted for 24 percent, and fish traps accounted for 16 percent. The corresponding landings percentages for the commercial gag fishery are: 25 percent for longline gear, 73 percent for handline gear, and 2 percent for fish traps. Other gear types account for a minuscule portion of the commercial landings of these species. Red grouper and gag are the two most significant species in the shallow-water grouper fishery. The measures in this rule will directly or indirectly affect all of these vessels.

Although this rule will directly or indirectly affect all commercial vessels that participate in the grouper fishery, this rule will affect vessels that operate in the eastern Gulf (Florida) more significantly because the bulk of the grouper fishery is in this area. Among the Florida vessels, the longline vessels will bear most of the cost of the measures, particularly with respect to red grouper. High-volume vertical line and fish trap vessels will also bear a disproportionate share of the burden. Estimates of gross annual receipts per vessel for vessels in the reef fish fishery are as follows: $67,979 for high-volume vessels using vertical line gear in the eastern Gulf; $24,588 for low-volume vessels using vertical line gear in the eastern Gulf; $116,989 for high-volume vessels using bottom longline gear Gulf-wide; $87,635 for low-volume vessels using bottom longline gear Gulf-wide; $93,426 for high-volume vessels using fish traps (Florida only); and $86,039 for low-volume vessels using fish traps (Florida only). Estimates of net annual income per vessel (defined as gross receipts less routine trip costs) for vessels in the reef fish fishery are as follows: $23,822 for high-volume vessels using vertical line gear in the eastern Gulf; $4,479 for low-volume vessels using vertical line gear in the eastern Gulf; $25,452 for high-volume vessels using bottom longline gear Gulf-wide; $14,978 for low-volume vessels using bottom longline gear Gulf-wide; $19,409 for high-volume vessels using fish traps (Florida only); and $21,025 for low-volume vessels using fish traps (Florida only).

This rule will also affect fish dealers that receive groupers by way of purchase, barter, or trade. About 431 dealers located in the five Gulf states receive groupers. Of this total, approximately 87 dealers located in Florida will be most directly affected by this final rule. Of these 87 dealers, approximately 54 dealers generally receive less than 10,000 lb (4,536 kg) of grouper per year while 11 dealers generally receive more than 80,000 lb (36,287 kg) of grouper per year. Among the longline vessels operating in the fishery, more vessels reported sales to dealers in Madiera Beach (54 vessels) and St. Petersburg (34 vessels) than any other locations. Information on the average number of employees per reef fish dealer is not known. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast has been estimated at approximately 700 individuals, both part- and full-time. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive exercise than dealing, therefore requiring greater employment. Therefore, it is assumed that total dealer employment is less than 700 individuals.

The measures in the rule that apply to the recreational sector will also affect all for-hire vessels that operate in the reef fish fishery. As of July 2003, a total of 1,377 reef fish permits had been issued to the recreational for-hire sector, which includes both charter boats and headboats. Similar to the situation with the commercial sector, most of the effects will be borne by those for-hire vessels that operate in Florida. This number, however, cannot be determined with certainty since the for-hire permit registration address does not necessarily indicate the area of operation. Further, identifying the number of vessels dependent upon shallow-water grouper species is not possible given available data. Based on fees, number of passengers, and number of trips, average annual receipts are estimated at $68,000 for charter vessels and $324,000 for headboats. Major activity centers for charter boats in Florida are Naples, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, Pensacola, and the Florida Keys. The major activity centers for headboats are Clearwater, Fort Myers/Fort Myers Beach, Destin, Panama City/Panama City Beach, and the Florida Keys. Florida Keys vessels, however, depend more on king mackerel, billfish, and dolphin than grouper species. Additional impacts from the measures contained in this rule will be borne by the extended communities at the activity centers and the businesses therein. However, these entities cannot be quantified due to lack of sufficient data.

The Small Business Administration (SBA) considers a commercial fishing business to be a small business entity if the business is independently owned and operated, is not dominant in its field of operation, and has receipts of up to $3.5 million annually. The benchmark for a small business in the for-hire fishery is a firm with receipts of up to $6 million per year. The SBA benchmark for a fish dealer or processing facility is a business with fewer than 500 employees. Given the revenue and employment information provided above, all the business entities potentially affected by the rule are considered small entities.

The biological reference points and stock status criteria specified by Secretarial Amendment 1 will not directly affect fishery behavior and, thus, are not expected to produce any direct economic impacts. The quota reductions and associated quota closure for the commercial shallow-water grouper fishery are expected to take effect by mid-November of the first year of implementation. The quota closure is expected to reduce annual net revenues by 11 percent for longline vessels, 4 percent for vertical line vessels, and 5 percent for fish trap vessels. If vessels can successfully increase their landings and revenues more than their costs by increasing their number of trips, net income losses due to the quota closure provision can be partially offset. However, this would cause the quota to be reached faster every year, inducing a derby that may eventually result in decreases in ex-vessel prices and further erode vessel profits. The quotas for tilefish and deep-water groupers match the historical commercial harvests for these species so these particular measures are not expected to reduce the profits of commercial vessels.

The red grouper recreational bag limit is not expected to substantially affect the revenues of for-hire vessels, although trip cancellations by recreational anglers may occur as a result of the change. However, only 5 percent of charter vessels operating off the Florida Gulf coast have reported targeting one species, while 36 percent reported targeting three or fewer species, and 90 percent reported targeting eight or fewer species. About 29 percent of charter vessels have reported not targeting specific species. None of the headboats in the Florida Gulf target only one species, 60 percent

target four or less species, and 41 percent do not target specific species. Since the bag limit change is specific to red groupers, other species may still be targeted or caught. Thus, trip cancellations as a result of the red grouper bag limit reduction are expected to be relatively few. Fishing trip costs of for-hire vessels are also not likely to increase, since these vessels are expected to continue to fish in the same areas they traditionally fish. Total effects of the rule on the net revenue or profit of the for-hire vessels in Florida, however, cannot be determined with certainty because firm-specific data are not available for the for-hire fleet.

The profit profile for dealers is not known due to the absence of applicable data. The projected reduction in ex-vessel sales ($2.248 million) as a result of the rule equals approximately 11.5 percent of total shallow-water grouper revenues. It is unlikely, however, that any dealer with substantial business operations would be wholly dependent upon harvests of shallow-water grouper. Thus, dealer business failure as a result of quota reductions is not expected to be substantial.

Three alternatives, including the no action alternative, were considered relative to the specification of red grouper MSY. The rule will establish red grouper MSY as a range whereas each of the two additional action alternatives specify the reference points alternately as the lower and upper bounds of the proposed range. Since specification of the maximum sustainable yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. The specification of a range contained in the rule was selected as best accounting for the uncertainty associated with the spawner-recruit relationship for this species.

Three alternatives, including the no action alternative, were considered relative to the specification of red grouper minimum stock size threshold. Since specification of the minimum stock size threshold is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the minimum stock size threshold than the rule, while another would establish a less conservative threshold. The specification contained in the rule was selected because it follows the recommendations of NMFS's Technical Guidance On the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (NOAA Technical Memorandum NMFS-F/SPO-##) (NMFS Technical Guidance).

Four alternatives, including the status quo alternative, were considered relative to the specification of red grouper maximum fishing mortality rate. One alternative would establish a more conservative specification of the maximum fishing mortality rate, while the other three alternatives would establish a less conservative threshold. The specification contained in the rule was selected because it follows the recommendations of the NMFS Technical Guidance.

Three alternatives, including the no action alternative, were considered relative to the specification of red grouper optimum yield. Since specification of the optimum yield is a required component of a fishery management plan, the no-action alternative is not a viable alternative. One alternative would establish a more conservative specification of the threshold, while another would establish a less conservative threshold. The specification contained in the rule was selected because it follows the recommendations of the NMFS Technical Guidance.

Five alternatives, including the no action alternative, were considered relative to the red grouper rebuilding plan specified by the rule. Since specification of a rebuilding plan is a required component of a fishery management plan for a resource that has been identified as overfished, the no-action alternative is not a viable alternative. Three alternatives would establish the same recovery period, 10 years, but specify different annual allowable biological catches. One of these alternatives would allow a higher initial catch than the rule, thereby inducing lower short-term adverse impacts than the rule. This alternative would not, however, require mandatory evaluations of the allowable biological catch every 3 years, as the rule will, and may not allow harvests to increase during the recovery period, as the rule will. Thus, this alternative may result in increased costs relative to the rule. The two alternatives that would establish lower catches than the rule would result in increased adverse impacts relative to the rule. An additional alternative would establish a shorter recovery period than the rule, requiring lower harvest levels, thereby accelerating the recovery schedule but with greater short-term adverse economic impacts. The recovery plan specified by the rule, therefore, best accomplishes NMFS' objectives while minimizing adverse economic impacts.

Three alternatives, including the no action alternative, were considered relative to the reduction in the shallow-water grouper quota by an amount equal to the reduction in the red grouper total allowable catch. Two alternatives would reduce the shallow-water grouper quota by amounts greater than the rule and would not, therefore, decrease the adverse impacts of the rule. The no action alternative could lead to greater mortality of red grouper as a result of catch and release mortality, therefore jeopardizing the recovery of the species.

Five alternatives were considered relative to commercial quota closure. The no-action alternative would close the commercial fishery for shallow-water grouper when the aggregate quota is reached. This would result in less adverse economic impacts than the closure specified by the rule but would result in excessive red grouper mortality if the red grouper quota is reached before the shallow-water grouper quota is met. One alternative would close the commercial red grouper fishery when this quota is reached, but allow the fishery for other shallow-water grouper species to continue until the aggregate quota is reached. While this alternative would result in less short-term adverse economic impacts than the rule, red grouper would continue to be caught as a bycatch species, thereby resulting in total red grouper mortality exceeding the quota. In addition to closing the commercial red grouper fishery, another alternative would close fishing for all shallow-water grouper species in certain areas of the Gulf when the red grouper quota is met. Multiple area closure options were considered, up to and including closure of the entire Gulf, which would match the provisions of the rule. For those options that are not Gulf-wide, the resultant short-term adverse impacts would be less than those of the rule. These options would potentially allow, however, excessive mortality of red grouper since red grouper would continue to be caught as bycatch. The final alternative would allow continued red grouper harvest if the red grouper allocation has not been met when the shallow-water grouper aggregate quota has been achieved. This alternative, however, would result in the shallow-water grouper aggregate quota being exceeded. Since these other alternatives would result in either excessive red grouper or excessive total shallow-water grouper mortality, only the closure specification contained in the rule is consistent with the NMFS' objectives.

Four alternatives were considered relative to fixed shallow-water grouper closed seasons. The fixed closure

specified by the rule is the status quo February 15 through March 15 closed season on red grouper, gag, and black grouper. One alternative would replace this closure with a March 1 through May 31 closure, and would apply the closure to either the same three species or all shallow-water grouper species. This alternative, regardless of the species options, would be more stringent than necessary to reduce red grouper harvests and protect gag spawning aggregations and would result in greater economic losses than the proposed alternative. A second alternative incorporates the same species options as the first rejected alternative, but does not identify a specific closure period. Depending upon the period chosen, the resultant impacts could be less than or greater than those of the rule. However, the rule was selected since the period encompassed best meets the dual purpose of reducing red grouper harvest and protecting gag spawning aggregations. A final alternative would eliminate the fixed closure. While this alternative would also eliminate the short-term adverse impacts of the rule, the desired reduction in red grouper harvests and protection of gag would not be accomplished.

Five alternatives were considered for commercial grouper trip limits. The rule will continue the status quo of no commercial grouper trip limits. The remaining alternatives would either impose trip limits that applied throughout the year, or would be triggered upon shallow-water grouper harvests reaching 75 percent of the aggregate quota. Each of these alternatives would result in greater adverse economic impacts than the rule and are, therefore, not consistent with NMFS' intent.

Approaches for constraining the recreational grouper harvest to its allocation included closures, bag limits, and minimum size limits. In addition to the specifications contained in the rule, which will maintain the status quo of no fixed closed season for the recreational grouper fishery, four alternatives were considered relative to recreational closures. In addition to options for applying the closure to selected species in the shallow-water grouper complex or the entire complex, each of these alternatives specified fixed closed seasons. One alternative additionally limited the closure to a specific region of the Gulf as opposed to the entire Gulf. Allowing the recreational fishery to remain open year-round, as will be accomplished by the rule in combination with appropriate bag and size limits, was determined to produce the least adverse economic impacts on the fishery. Thus, the rule was determined to best achieve NMFS' objectives.

Four alternatives were considered for the recreational grouper bag limit. While this rule will establish a limit of two red grouper out of the aggregate five-fish shallow-water grouper bag limit, one alternative would establish a similar limit on gag in addition to the red grouper limit. This alternative would, thus, be more restrictive than the rule and increase adverse impacts. Additionally, this alternative would exceed the protection currently believed necessary for gag. Another alternative would not change the red grouper limit but would instead reduce the total aggregate bag limit. Available options, however, would result in either or both reductions in red grouper harvests that are greater than necessary or reductions in the harvest of other grouper species that are not currently justified. Thus, this alternative would increase the negative impacts on the fishery. The final alternative, the status quo, would not achieve the required red grouper harvest reductions. The rule, therefore, best achieves the necessary harvest reductions at the least adverse impact.

Four alternatives were considered to each of the minimum size specifications of the rule to retain the commercial and recreational red grouper minimum size limits at their current specification of 20 inches (50.8 cm) total length. The larger minimum size limits, however, lead to harvest reductions that exceed the required reductions, generate increased discard mortality, and increase expected losses relative to the rule. Thus, the rule best achieves NMFS' objectives at the least adverse impact.

The rule specifies that the fishing year remains the status quo, which provides that the fishing year for all reef fish begins January 1 each year. Alternatives to the status quo provide for a fishing year to start after a fixed commercial season for any reef fish or for the grouper fishery only. These alternatives are not expected to have immediate impacts on fishing participants. Maintaining the status quo, however, as specified by the rule, provides stability and helps eliminate future uncertainty associated with changes in the start of the open season for various species within the grouper fishery in particular and reef fish fishery in general.

The rule establishes a quota for tilefish and reduces the deep-water grouper quota from its current level, which has never been met, to the average annual harvest from 1996–2000, with the intent to minimize the potential adverse impacts of participants in the shallow-water grouper fishery shifting effort to the deep-water species. In addition to options encompassing different quota levels and the status quo alternative, significant alternatives to the rule came in two forms. One form set different quota levels for deep-water groupers and tilefish independently, while the other form combined deep-water groupers and tilefish and provided for different quota levels for the aggregate. The alternative independent quotas for each group fall between the extremes of the alternative options and, thus, would be expected to result in less adverse impacts than the lower options, and more adverse impacts than the higher options. However, the quotas specified by the rule are equal to the average commercial harvest for these species, so adverse impacts on fishing participants are expected to be minimal.

Copies of the RIR and FRFA are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 8, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.39, paragraph (b)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding jewfish and Nassau grouper--5 per person per day, but not to exceed 2 red grouper per person per day or 1 speckled hind or 1 Warsaw grouper per vessel per day.

* * * * *

■ 3. In § 622.42, paragraphs (a)(1)(ii) and (iii) are revised and paragraph (a)(1)(iv) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper,

warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined--1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined -8.80 million lb (3.99 million kg), gutted weight, that is, eviscerated but otherwise whole. Within the shallow-water grouper quota there is a separate quota for red grouper--5.31 million lb (2.41 million kg), gutted weight. When either the shallow-water grouper quota or the red grouper quota is reached, the entire shallow-water grouper fishery will be closed and the closure provisions of § 622.43(a) introductory text and § 622.43(a)(1)(i) apply to the entire shallow-water grouper fishery.

(iv) Tilefishes (i.e., tilefish and goldface, blackline, anchor, and blueline tilefish) combined--0.44 million lb (0.20 million kg), gutted weight, that is, eviscerated but otherwise whole.

* * * * *

[FR Doc. 04–13473 Filed 6–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040430138–4173–02; I.D. 042204C]

RIN 0648–AS28

Atlantic Highly Migratory Species (HMS) Fisheries; Adjustment of the Semiannual Quotas for Large Coastal Sharks (LCS) in the North Atlantic Region; Shark Fishing Season

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

ACTION: Final rule.

SUMMARY: This final rule adjusts the North Atlantic region seasonal quota split from an equal percentage to a 20- to 80- percentage split between the first and second 2004 semiannual seasons, respectively. This action also notifies eligible participants of the opening and closing dates for the commercial Atlantic LCS fishery for the 2004 second semiannual fishing season in the North Atlantic region.

DATES: This rule is effective on July 9, 2004. The fishery opening for LCS in the North Atlantic region is effective 12:01 a.m., local time, July 1, 2004, through 11:30 p.m., local time, July 15, 2004, and the closure is effective 11:30 p.m., local time, July 15, 2004, through 11:59 p.m., local time December 31, 2004.

ADDRESSES: For copies of Amendment 1 to the Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations, please write to Highly Migratory Species (HMS) Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or visit the webpage *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Chris Rilling, Karyl Brewster-Geisz, or Heather Stirratt, phone 301–713–2347 or fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and Amendment 1 to the HMS FMP, finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS issued a final rule (68 FR 74746) that established the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw). The final rule also established regional LCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split between the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. As was done since 1993, the quotas for each region were further split evenly between the 2004 first and second semiannual fishing seasons.

On May 13, 2004, NMFS published a proposed rule to adjust the seasonal quota split for the North Atlantic region (69 FR 26540). The comment period on that proposed rule closed on May 28, 2004. As described in the proposed rule, landings data from 2000–2002 indicated that the majority of LCS in the North Atlantic region were landed in the second semiannual season. Historically, first season landings, including state landings after a Federal closure, have ranged from 6 to 38 percent, with an average of approximately 20 percent of the annual regional quota for the North Atlantic being landed during the first season. Second season landings, including state landings after a Federal closure, have ranged from 62 to 94 percent, with an average of approximately 80 percent of the annual regional quota for the North Atlantic being landed during the second season. In addition, as of April 23, 2004, there were no reported landings of LCS for the North Atlantic region during the first semiannual season, indicating that the current 50–percent split between the two semiannual seasons does not reflect the historic or current landings for the North Atlantic region.

Thus, this final rule adjusts the seasonal quota split from an even split (50/50) to a 20/80 split resulting in 8.1 mt dw (17,857.3 lb dw) for the first semiannual season and 32.6 mt dw (71,870.0 lb dw) for the second semiannual season, not adjusted for any over- or underharvest. This action will not affect the overall LCS landings quota for the fishery or the region (40.7 mt dw or 89,727.2 lb dw for the North Atlantic), but will adjust the North Atlantic 2004 semiannual season quotas to result in a longer second season that more accurately reflects historical and current landings in the region. Available information regarding any over- or underharvest from both seasons will be considered before establishing the trimester season that begins in 2005.

There have been no changes from the proposed to the final rule.

Since neither the annual quotas, nor the overall regional quotas will be changed, NMFS does not expect this action to result in any negative economic consequences. This action will likely have a positive economic impact by allowing fishermen to harvest an amount closer to the actual historic landings for the region. Without making this adjustment, the length of the second semiannual season would have to be shortened when the lower existing quota was reached, thus preventing fishermen from landing as many sharks as they have historically. The shortened season would also make effective management and reporting of the data in a timely manner impracticable. Dealer reports of shark landings are received on a bi-weekly basis, and under the lower existing quota the season would have to be closed in a matter of days rather than weeks, thus not allowing sufficient time to review landings reports.

On June 1, 2004, NMFS published a notice in the **Federal Register** (68 FR 30837) announcing the opening and closing dates for the commercial Atlantic large coastal, small coastal, and pelagic shark fisheries for the 2004

second semiannual fishing season and the quotas for the Gulf of Mexico and the South Atlantic regions. This information is not repeated here.

Response to Comments

Comments on the proposed rule received during the public comment period are summarized here together with NMFS' responses.

Comment 1: The quotas have resulted in too short of a fishing season in the South Atlantic. If the quota split for the North Atlantic region is going to result in a longer second semiannual fishing season for the North Atlantic, then the South Atlantic region should have been allowed to have a longer first semiannual fishing season.

Response: The lower overall LCS quota implemented in Amendment 1 to the HMS FMP, combined with splitting the quota among three regions, has resulted in a shorter fishing season for each of the regions. Adjusting the North Atlantic regional quota split between the first and second semiannual seasons is necessary because, as of April 23, 2004, there had been no reported landings of LCS for the first semiannual season in the North Atlantic region. By contrast, as of April 23, 2004, 87 percent of the South Atlantic regional quota for the first season had been reported landed. The closure of the fishery in the South Atlantic region was thus timed appropriately to avoid an overharvest of LCS. If there had been a similar significant underharvest of LCS in other regions, along with historical data indicating a majority of landings in the second season, NMFS would have considered taking similar action to allow additional harvest during the second semiannual season, as appropriate, given the overall quota. For any quota not fully taken in any region, the underharvest will be added to the quota in the 2005 fishing year, consistent with § 635.27(b)(1)(vi).

Comment 2: NMFS should not allow any harvest of sharks.

Response: The Atlantic commercial shark fishery is being managed to allow for LCS to rebuild, consistent with the Magnuson-Stevens Act. In Amendment 1 to the HMS FMP, NMFS established the overall annual quota for LCS at 1,017 mt dw based on the latest stock assessments, and established a revised rebuilding plan for LCS. The environmental impacts of the overall regional quotas were analyzed in Amendment 1 to the HMS FMP and the final rule published on December 24, 2003, (68 FR 74746). This action does not change the 40.7–mt dw quota allocated for the North Atlantic region as part of the rebuilding plan. Adjusting the 2004 quota allocation for the North Atlantic region between the first and second semiannual seasons is not expected to have a negative impact on shark populations.

Comment 3: The 15–day comment period was too short to allow true public comment.

Response: The 15–day comment period was necessary in order to ensure sufficient notice of the closing date for the North Atlantic region's second semiannual fishing season prior to the start of that season on July 1, 2004.

Comment 4: Adjusting the semiannual quota split from a 50/50 split to a 80/20 split is appropriate given that no LCS were reported landed in the North Atlantic region during the first semiannual fishing season.

Response: The 80/20 split in this action ensures that the quota represents the true historical landings for the second semiannual season in the North Atlantic, without exceeding the overall quota for the region or the fishery as a whole.

Regulations at 50 CFR 635.27(b) provide for adjustments of shark fishing quotas via a framework regulatory action.

Available Quota

On December 24, 2003 (68 FR 74746), NMFS announced that the 2004 annual landings quotas for LCS was established at 1,017 metric tons (mt) dressed weight (dw) (2,242,078.2 lb dw). The LCS quotas was also further split, consistent with § 635.27(b)(1)(iii), between three fishing regions. The North Atlantic fishing region received four percent of the quota or 40.7 mt dw (89,727.2 lb dw).

This final rule allocates 20 percent of the North Atlantic regional quota to the first 2004 semiannual fishing season and 80 percent to the second 2004 semiannual fishing season. Without accounting for any under- or overharvests, the 2004 North Atlantic regional semiannual LCS quota levels are 8.1 mt dw (17,857.3 lb dw) and 32.6 mt dw (71,870 lb dw) for the first and second semiannual seasons, respectively.

In the December 2003 final rule, NMFS announced that due to an overharvest of the quota in the first 2003 semiannual season, the 2004 first semiannual quota for all regions needed to be reduced by 55.4 mt dw (122,134.8 lb dw). Thus, accounting for four percent of the overharvest (2.2 mt dw or 4,850 lb dw), the North Atlantic regional LCS quota for the first 2004 semiannual season is now 5.9 mt dw (13,007 lb dw).

In the fishing season **Federal Register** notice for the second 2004 semiannual fishing season (69 FR 30837, June 1, 2004), NMFS announced that due to an underharvest in the 2003 second semiannual fishing season, the North Atlantic fishing region would have 7 mt dw (15,432.2 lb dw) added to its available quota. Thus, the 2004 second semiannual fishing season LCS quotas for the North Atlantic region is 39.6 mt dw (87,302.2 lb dw).

NMFS will take appropriate action before January 1, 2005, in order to determine and announce the 2005 first trimester quotas for the Atlantic shark fisheries, consistent with § 635.27(b)(1)(iii).

Fishing Season Notification

As announced in a separate **Federal Register** notice (69 FR 30837, June 1, 2004), the 2004 second semiannual commercial fishing season for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open July 1, 2004. To estimate the LCS fishery closure dates, NMFS calculated the average reported catch rates for each region from the second seasons from recent years (2000, 2001, 2002, and 2003) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates of the years used to estimate catch rates. Additionally, pursuant to § 635.5 (b)(1), shark dealers must report any sharks received twice a month: those sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS will close the Federal LCS fishery on either the 15th or the end of any given month.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 76 percent of the available LCS quota would likely be taken by the second week of July and 152 percent of the available LCS quota would likely be taken by the end of July. Dealer data also indicate that, on average, approximately 9 mt dw (19,841 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 24 percent of the available quota. Thus, if catch rates in 2004 are similar to the

average catch rates from 2000 to 2003, 100 percent (76 + 24 percent) of the quota could be caught over the entire semiannual season if Federal waters are closed during the second week of July. If the fishery remains open until the end of July, the quota would likely be exceeded (152 + 24 percent = 176 percent). Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the North Atlantic LCS quota for the second 2004 semiannual season will likely be attained by July 15, 2004. Thus, the North Atlantic LCS fishery will close on July 15, 2004, at 11:30 p.m. local time.

Classification

This final rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. The AA previously determined in Amendment 1 to the HMS FMP that the implementation of regional quotas was necessary to ensure effective implementation of the commercial shark fishery. The AA has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received concerning the economic impact of the rule. As a result, a regulatory flexibility analysis was not prepared.

As of October 2003, there were 56 directed shark limited access permits in the North Atlantic region that would be affected by this rule, all of which are considered small entities. This final rule will have a positive economic impact because it would allow the fishery to stay open longer, thus providing fishermen with a better opportunity to catch the quota. The positive economic impact is not expected to be significant because the overall quota would not be changed, only the period during which the quota may be harvested. By not making this adjustment, the second semiannual season length would be considerably shorter because the fishery would have to close when the lower existing quota was reached, the quota would not reflect historic and current landings in the fishery, and there could be a negative economic impact on fishermen due to the early closure and lower landings.

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

NMFS notified all states, consistent with the Coastal Zone Management Act, of the regional quotas during the rulemaking for Amendment 1 of the HMS FMP. No states indicated that the regional quota requirement was inconsistent with their coastal zone management programs. Thus, NMFS has determined that adjusting the semiannual regional quota for the North Atlantic region would be consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs.

The environmental impacts of the overall regional quotas were analyzed in Amendment 1 to the HMS FMP and the final rule published on December 24, 2003, (68 FR 74746). Adjusting the 2004 quota allocation for the North Atlantic region between the first and second semiannual seasons is not expected to have impacts on endangered species or marine mammal interaction rates beyond those impacts considered in the October 29, 2003, Biological Opinion. NOAA Fisheries intends to act expeditiously to inform the interested public about this final action using direct email notification, a fax notice, and the internet.

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

Dated: June 9, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–13452 Filed 6–9–04; 3:27 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 114
Tuesday, June 15, 2004

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

FEDERAL TRADE COMMISSION

16 CFR Part 680

RIN 3084–AA94

Affiliate Marketing Rule

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule, request for comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is publishing for comment a proposed rule that is required by Section 214(b) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), with respect to entities subject to its jurisdiction under Section 621(a) of the Fair Credit Reporting Act (FCRA). Section 214(a) of the FACT Act amends the FCRA by adding a new section 624, which the proposed regulations implement by providing for consumer notice and an opportunity to prohibit affiliates from using certain information to make or send marketing solicitations to the consumer. The FACT Act requires certain other federal agencies to publish similar rules, and mandates that the FTC and other agencies consult and cooperate so that their regulations implementing this provision are consistent and comparable with one another.

DATES: Comments must be received by July 20, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FACT Act Affiliate Marketing Rule, Matter No. R411006'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission, Office of the Secretary, Room H–159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form clearly labeled ''Confidential,'' and comply with the Commission Rule 4.9(c). 16 CFR 4.9(c). Any comment filed in paper form should be sent by courier or overnight service, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov;* (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions. Such comments should also be sent to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site at *http://www.ftc.gov* to the extent practicable. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Toby M. Levin and Loretta Garrison, Attorneys, (202) 326–3224, Division of Financial Practices, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA or Act), enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is collected and communicated by consumer reporting agencies. 15 U.S.C. 1681–1681x. In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA. Pub. L. 104–208, 110 Stat. 3009.

The FCRA, as amended, provides that a person may communicate to an affiliate or non-affiliated third party information solely as to transactions or experiences between the consumer and the person without becoming a consumer reporting agency.[1] In addition, the communication of such transaction or experience information among affiliates will not result in any affiliate becoming a consumer reporting agency. *See* FCRA §§ 603(d)(2)(A)(i) and (ii).

Section 603(d)(2)(A)(iii) of the FCRA provides that a person may communicate ''other'' information—that is, non-transaction or experience information that would otherwise be a ''consumer report''—among its affiliates without becoming a consumer reporting

[1] The FCRA creates substantial obligations for a person that meets the definition of a ''consumer reporting agency''(CRA) in section 603(f) of the statute. Most importantly, CRAs must make reports only to parties with permissible purposes listed in section 604, limit reporting of negative information that is older than the times set out in section 605, maintain reasonable procedures to ensure accuracy of reports as required by section 607(b), make file disclosures to consumers required by section 609, and reinvestigate disputes using the procedures set forth in section 611.

agency if the person has given the consumer a clear and conspicuous notice that such information may be communicated among affiliates and an opportunity to ''opt-out'' or direct that the information not be communicated, and the consumer has not opted out. The notice and opt-out provided in section 603(d)(2)(A)(iii) of the FCRA was the subject of a proposed rulemaking by the Federal banking agencies in October 2000.[2] 65 FR 63120 (Oct. 20, 2000). The Commission, which did not have FCRA rulemaking authority, shortly thereafter issued for public comment a proposed interpretation of the affiliate information sharing provisions that was parallel to the banking agencies' proposed rule. 65 FR 80202 (Dec. 22, 2000). The banking agencies and the Commission had not completed action in those proceedings when Congress enacted the FACT Act.

The current proposal addresses a new notice and opt-out provision that applies to the use of certain information by one member of a business family, when received from an affiliate, to make or send marketing solicitations for its products and services to consumers. Although there is a certain degree of overlap between the two opt-outs, the two opt-outs are distinct and serve different purposes. Therefore, nothing in this proposal regarding the opt-out for affiliate marketing supersedes or replaces the affiliate sharing opt-out contained in section 603(d)(2)(A)(iii) of the Act.[3]

The Fair and Accurate Credit Transactions Act of 2003

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. The FACT Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, to allow consumers to exercise greater control regarding the type and amount of solicitations they receive, and to restrict the use and disclosure of sensitive medical information. To promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information. Finally, to bolster efforts to improve financial literacy among consumers, the FACT Act creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government.

Section 214 of the FACT Act adds a new section 624 of the FCRA. This new provision gives consumers the right to restrict a person from using certain information about a consumer obtained from an affiliate to make solicitations to that consumer. That section also requires the Commission and various federal agencies charged with regulating financial institutions,[4] in consultation and coordination with each other, to issue regulations in final form implementing section 214 not later than 9 months after the date of enactment. These rules must become effective not later than 6 months after the date on which they are issued in final form.

II. Explanation of the Proposed Regulations

New section 624 of the FCRA generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Section 624 governs the use of information by an affiliate, not the sharing of information with or among affiliates. As such, the new opt-out right contained in section 624 is distinct from the existing FCRA opt-out right for affiliate sharing under section 603(d)(2)(A)(iii), although these opt-out rights and the information subject to these opt-outs overlap to some extent. As noted above, the FCRA allows some information (transaction or experience information) to be shared among affiliates without giving the consumer notice and an opportunity to opt out, and provides that ''other'' information may not be shared among affiliates without giving the consumer notice and an opportunity to opt out. The new opt-out right for affiliate marketing generally applies to both transaction or experience information and ''other'' information.

The Commission seeks comment on these proposed regulations implementing section 624 of the FCRA, including in particular the matters discussed below, especially from (1) Consumers and (2) companies who believe they face considerations not applicable to institutions regulated by federal financial agencies.

Responsibility for Providing Notice and an Opportunity To Opt Out

Section 624 does not specify which affiliate must give the consumer notice and an opportunity to opt out of the use of the information by an affiliate for marketing purposes. Under one view, the person that receives certain consumer information from its affiliate and wants to use that information to make or send solicitations to the consumer could be responsible for giving the notice because the statute is drafted as a prohibition on the affiliate that receives the information from using such information to send solicitations, rather than as an affirmative duty imposed on the affiliate that sends or communicates that information. On the other hand, section 624(a)(1)(A) provides that the disclosure must state that the information ''may be communicated'' among affiliates for purposes of making solicitations, suggesting that the affiliate that sends or communicates information about a consumer should be responsible for providing the notice. In addition, section 214(b)(2) of the FACT Act requires the Commission to consider existing affiliate sharing notification practices and provide for coordinated and consolidated notices. Similarly, section 214 allows for the combination of affiliate marketing opt-out notices with other notices required by law, which may include Gramm-Leach-Bliley Act (GLB Act) privacy notices. Thus, the provisions of section 214 suggest that the person communicating information about a consumer to its affiliate should give the notice because that is the person that would likely provide the affiliate sharing opt-out notice under section 603(d)(2)(A)(iii) of the FCRA and other disclosures required by law.

The Commission proposes that the person communicating information about a consumer to its affiliate should be responsible for satisfying the notice requirement, if applicable. A rule of construction provides flexibility to allow the notice to be given by the person that communicates information to its affiliate, by the person's agent, or

[2] The banking agencies are the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision. The National Credit Union Administration proposed a virtually identical rule to apply to institutions subject to its jurisdiction immediately thereafter. 65 FR 64168 (Oct. 26, 2000)

[3] The proposed regulations would implement the restrictions on the use of consumer information under Section 624 of the amended FCRA, but do not address the provisions of Section 603(d)(3) regarding the sharing of medical information among affiliates. Although Section 604(g)(3)(C) grants the Commission the authority to make a rule with respect to the sharing by affiliates of medical information, it is not doing so at this time.

[4] The ''Agencies'' are the Federal banking agencies (see note 2), the National Credit Union Administration, and the Securities and Exchange Commission.

through a joint notice with one or more other affiliates. This approach provides flexibility and facilitates the use of a single notice. At the same time, it ensures that the notice is not provided solely by the affiliate that receives and uses the information to make or send solicitations, which may be a person from which the consumer would not expect to receive important notices regarding the consumer's opt-out rights. The Commission invites comment on whether the affiliate receiving the information should be permitted to give the notice solely on its own behalf. The Commission specifically solicits comment on whether a receiving affiliate could provide notice without making or sending any solicitations at the time of the notice and on whether such a notice would be effective.

Scope of Coverage

The statute specifies certain circumstances, which are included in the proposed regulations, when the provisions of this part do not apply. New section 624(a)(4) provides that the requirements and prohibitions of that section do not apply, for example, when: (1) The affiliate receiving the information has a pre-existing business relationship with the consumer; (2) the information is used to perform services for another affiliate (subject to certain conditions); (3) the information is used in response to a communication initiated by the consumer; or (4) the information is used to make a solicitation that has been authorized or requested by the consumer. The Commission has incorporated each of these statutory exceptions into the proposed rule.

The proposal uses the term ''eligibility information'' to describe the type of information that the statute allows consumers to bar affiliates from using to send marketing solicitations. The formula that defines the term in the proposal is designed to precisely reflect section 624(a)(1) of the Act—any information the communication of which would be a ''consumer report'' if the statutory exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA (for transaction or experience information and for ''other'' information that is subject to the affiliate-sharing opt-out) did not apply. Under section 603(d)(1) of the FCRA, a ''consumer report'' means any written, oral, or other communication of any information by a consumer reporting agency bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized in section 604 of the FCRA. The term ''eligibility information'' is designed to facilitate discussion, and not to change the scope of information covered by section 624(a)(1) of the Act. The Commission invites comment on whether the term ''eligibility information,'' as defined, appropriately reflects the scope of coverage, or whether the regulation should track the more complicated language of the statute regarding the communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A) of the FCRA.

Duration of Opt-Out

Section 624 provides that a consumer's election to prohibit marketing based on shared information shall be effective for at least 5 years. Accordingly, the proposal provides that a consumer's opt-out election is valid for a period of at least 5 years (the opt-out period), beginning as soon as reasonably practicable after the consumer's opt-out election is received, unless the consumer revokes the election in writing, or if the consumer agrees, electronically, before the opt-out period has expired. When a consumer opts out, an affiliate that receives eligibility information about that consumer from another affiliate may not make or send solicitations to the consumer during the opt-out period based on that information, unless an exception applies or the opt-out is revoked.

To avoid the cost and burden of tracking consumer opt-outs over 5-year periods with varying start and end dates and sending out extension notices in 5-year cycles, some companies may choose to treat the consumer's opt-out election as effective for a period longer than 5 years, including in perpetuity, unless revoked by the consumer. A company that chooses to honor a consumer's opt-out election for more than 5 years would not violate the proposed regulations.

Key Definitions

Section 624 allows eligibility information shared with an affiliate to be used by that affiliate in making solicitations in certain circumstances, including where the affiliate has a pre-existing business relationship with the consumer. The terms ''solicitation'' and ''pre-existing business relationship'' are defined in the statute and the proposed regulation, and discussed in detail below in the Section-by-Section Analysis. The Commission has the authority to prescribe by regulation circumstances other than those specified in the statute that would constitute a ''pre-existing business relationship'' or would not constitute a ''solicitation.'' The Commission seeks comment on whether there are additional circumstances that should be deemed a ''pre-existing business relationship'' or other types of communications that should not be deemed a ''solicitation.''

The Commission solicits comment on all aspects of the proposal, including but not limited to items discussed in the Section-by-Section Analysis below.

III. Section-by-Section Analysis

Section 680.1—Purpose, Scope, and Effective Dates

Proposed § 680.1 sets forth the purpose and scope of the proposed regulations.

Section 680.2—Examples

Proposed § 680.2 describes the use of examples in the proposed regulations. In particular, the examples in this part are not exclusive. However, compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

Section 680.3—Definitions

Proposed § 680.3 contains definitions for the following terms: ''affiliate'' (as well as the related terms ''company'' and ''control''); ''clear and conspicuous''; ''communication''; ''consumer''; ''eligibility information''; ''person''; ''pre-existing business relationship''; and ''solicitation.''

Affiliate

Several FCRA provisions apply to information sharing with persons ''related by common ownership or affiliated by corporate control,'' ''related by common ownership or affiliated by common corporate control,'' or ''affiliated by common ownership or common corporate control.'' *E.g.,* FCRA, sections 603(d)(2), 615(b)(2), and 624(b)(2). Section 2 of the FACT Act defines the term ''affiliate'' to mean ''persons that are related by common ownership or affiliated by corporate control.''

The FCRA, the FACT Act, and the GLB Act contain a variety of approaches to the term ''affiliate.'' Proposed

paragraph (b) simplifies the various FCRA and FACT Act formulations by defining ''affiliate'' to mean any person that is related by common ownership or common corporate control with another person.[5] The Commission believes it is important to harmonize the various treatments of ''affiliate'' as much as possible and construe them to mean the same thing. Comment is solicited on whether there is any meaningful difference between the FCRA, FACT Act, and GLB Act definitions. In addition, the proposal uses a definition of ''control'' that applies exclusively to the control of a ''company,'' and defines ''company'' to include any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization. *See* proposed paragraphs (d) (''company'') and (f) (''control'')

Clear and Conspicuous

Proposed paragraph (c) defines the term ''clear and conspicuous'' to mean reasonably understandable and designed to call attention to the nature and significance of the information presented. Companies retain flexibility in determining how best to meet the clear and conspicuous standard.

Companies may wish to consider a number of methods to make their notices clear and conspicuous. A notice or disclosure may be made reasonably understandable through methods that include but are not limited to: using clear and concise sentences, paragraphs, and sections; using short explanatory sentences; using bullet lists; using definite, concrete, everyday words; using active voice; avoiding multiple negatives; avoiding legal and highly technical business terminology; and avoiding explanations that are imprecise and are readily subject to different interpretations. Various methods may also be used to design a notice or disclosure to call attention to the nature and significance of the information in it, including but not limited to: using a plain-language heading; using a typeface and type size that are easy to read; using wide margins and ample line spacing; using boldface or italics for key words. Companies that provide the notice on a web page may use text or visual cues to encourage scrolling down the page if necessary to view the entire notice, and take steps to ensure that other elements on the web site (such as pop-up ads, text, graphics, hyperlinks, or sound) do not distract attention from the notice.

When a notice or disclosure is combined with other information, methods for designing the notice or disclosure to call attention to the nature and significance of the information in it may include using distinctive type sizes, styles, fonts, paragraphs, headings, graphic devices, and groupings or other devices. It is unnecessary, however, to use distinctive features, such as distinctive type sizes, styles, or fonts, to differentiate an affiliate marketing opt-out notice from other components of a required disclosure, for example, where a privacy notice under the GLB Act includes several opt-out disclosures in a single notice. Nothing in the clear and conspicuous standard requires the segregation of an affiliate marketing opt-out notice when it is combined with a privacy notice under the GLB Act or other required disclosures.

It may not be feasible to incorporate all of the methods described above all the time. For example, a company may have to use legal terminology, rather than everyday words, in certain circumstances to provide a precise explanation. Companies are encouraged, but not required, to consider the practices described above in designing their notices or disclosures, as well as using readability testing to devise notices that are understandable to consumers.

Consumer

Proposed paragraph (e) defines the term ''consumer'' to mean an individual, which follows the statutory definition in section 603(c) of the FCRA. For purposes of this definition, an individual acting through a legal representative qualifies as a consumer.

Eligibility Information

Under proposed paragraph (g), the term ''eligibility information'' means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA did not apply. Eligibility information may include a person's own transaction or experience information, such as information about a consumer's account history with that person, and other information, such as information from credit bureau reports or applications.

Person

Proposed paragraph (h) defines the term ''person'' to mean any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. A person may act through an agent, such as a licensed agent (in the case of an insurance company), a trustee (in the case of a trust), or any other agent. For purposes of this part, actions taken by an agent on behalf of a person that are within the scope of the agency relationship will be treated as actions of that person.

Pre-Existing Business Relationship

Proposed paragraph (i) defines this term to mean a relationship between a person and a consumer based on the following: (1) A financial contract between the person and the consumer that is in force; (2) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person, during the 18-month period immediately preceding the date on which a solicitation covered by 16 CFR 680 is made or sent to the consumer; or (3) an inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a covered solicitation is made or sent to the consumer. The proposed definition generally tracks the statutory definition contained in section 624 of the Act, with certain revisions for clarity.

In regard to sales and leases of goods or services, and consumer inquiries about such transactions, the definition is substantially similar to the definition of ''established business relationship'' under the amended Telemarketing Sales Rule (TSR) (16 CFR 310.2(n)). That definition was informed by Congress's intent that the ''established business relationship'' exemption to the ''do not call'' provisions of the Telephone Consumer Protection Act (47 U.S.C. 227 *et seq.*) should be grounded on the reasonable expectations of the consumer.[6] Congress's incorporation of similar language in the definition of ''pre-existing business relationship''[7] suggests that it would be appropriate to

[5] In this rule, ''affiliate'' refers to any entity over which the Commission has FCRA enforcement authority under section 621(a)(1), which is universal except where ''specifically committed to some other government agency under subsection (b) hereof.'' Section 621(b) assigns federal bank and other agencies to enforce the statute as to certain banks, savings associations, credit unions, transportation and agricultural entities to other agencies. Because the Commission has enforcement authority over FCRA provisions as to all entities not assigned to other agencies, it is quite possible that in some corporate families one affiliate (*e.g.*, a mortgage lender) may be subject to the jurisdiction of the Commission while another (*e.g.*, a bank) would be subject to the jurisdiction of a different federal regulator.

[6] H.R. Rep. No. 102–317, at 14–15 (1991). 68 FR 4580, 4591–94 (Jan. 29, 2003).

[7] 149 Cong. Rec. S13,980 (daily ed. Nov. 5, 2003) (statement of Senator Feinstein).

consider the reasonable expectations of the consumer in determining the scope of this exception. Thus, for purposes of this regulation, an inquiry includes any affirmative request by a consumer for information, such that the consumer would reasonably expect to receive information from the affiliate about its products or services.[8] A consumer would not reasonably expect to receive information from the affiliate if the consumer does not request information or does not provide contact information to the affiliate.

The Commission has the statutory authority to define in the regulations other circumstances that qualify as a pre-existing business relationship. The Commission has not proposed to exercise this authority to expand the definition of ''pre-existing business relationship'' beyond the circumstances set forth in the statute. Comment is solicited, however, on whether there are other circumstances that the Commission should include within the definition of ''pre-existing business relationship.''

Solicitation

Proposed paragraph (j) defines this term to mean marketing initiated by a person to a particular consumer that is based on eligibility information communicated to that person by its affiliate and is intended to encourage the consumer to purchase a product or service. A communication, such as a telemarketing solicitation, direct mail, or e-mail, is a solicitation if it is directed to a specific consumer based on eligibility information. The proposed definition of solicitation does not, however, include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications. The proposed definition tracks the statutory definition contained in section 624 of the Act, with certain revisions for clarity.

The Commission has the statutory authority to determine by regulation that other communications do not constitute a solicitation. The Commission has not proposed to exercise this authority to specify other communications that would not be deemed ''solicitations'' beyond the circumstances set forth in the statute.

Comment is solicited, however, on whether there are other communications that the Commission should determine do not meet the definition of ''solicitation.'' Comment is also requested on whether, and to what extent, various tools used in Internet marketing, such as pop-up ads, may constitute solicitations as opposed to communications directed at the general public, and whether further guidance is needed to address Internet marketing.

Section 680.20—Use of Eligibility Information by Affiliates for Marketing

Proposed § 680.20 establishes the basic rules governing the requirement to provide the consumer with notice and a reasonable opportunity to opt out of a person's use of eligibility information that it obtains from an affiliate for the purpose of making or sending solicitations to the consumer. The statute is ambiguous because it does not specify which affiliate must provide the opt-out notice to the consumer. The proposed regulation would resolve this ambiguity by imposing certain duties on the person that communicates the eligibility information and certain duties on the affiliate that receives the information with the intent to use that information to make or send solicitations to consumers. These bifurcated duties are set forth in paragraphs (a) and (b).

Paragraph (a) sets forth the duty of a person that communicates eligibility information to an affiliate. Under the proposal, before an affiliate may use eligibility information to make or send solicitations to the consumer, the person that communicates eligibility information about a consumer to an affiliate must provide a notice to the consumer stating that such information may be communicated to and used by the affiliate to make or send solicitations to the consumer regarding the affiliate's products and services, and must give the consumer a reasonable opportunity and a simple method to opt out.

Some organizations may choose to share eligibility information among affiliates but not allow the affiliates that receive that information to use it to make or send marketing solicitations. In that case, proposed paragraph (a) would not apply and an opt-out notice would not be required if none of the affiliates that receive eligibility information use it to make or send solicitations to consumers.

Under the proposal, paragraph (a) would not apply if, for example, a finance company asks its affiliated retailer to include finance company marketing material in periodic statements sent to consumers by the retailer without regard to eligibility information. The Commission invites comment on whether, given the policy objectives of section 214 of the FACT Act, proposed paragraph (a) should apply if affiliated companies seek to avoid providing notice and opt-out by engaging in the ''constructive sharing'' of eligibility information to conduct marketing. For example, the Commission requests commenters to consider the applicability of paragraph (a) in the following circumstance. A consumer has a relationship with a retailer, and the retailer is affiliated with a finance company. The finance company provides the retailer with specific eligibility criteria, such as consumers having a credit limit in excess of $3,000, for the purpose of having the retailer make solicitations on behalf of the finance company to consumers that meet those criteria. Additionally, the consumer responses provide the finance company with discernible eligibility information, such as a response form that is coded to identify the consumer as an individual who meets the specific eligibility criteria.

Proposed paragraph (a) also contains two rules of construction. The first rule of construction provides that the notice may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliate group of companies that includes the common corporate name used by that person. The rule of construction also provides alternatives regarding the manner in which the notice is given. A person that communicates eligibility information to an affiliate may provide the notice directly to the consumer, or may use an agent to provide the notice on the person's behalf. If the agent is the person's affiliate, the agent may not include any solicitations other than those of the person on or with the notice, unless one of the exceptions in paragraph (c) applies. Additionally, the agent must provide the opt-out notice in the name of the person or a common corporate name.[9] If an agent is used, the person remains responsible for any failure of the agent to fulfill its notice obligations. Alternatively, a person may provide a joint notice with one or more of its affiliates as provided in § 680.24(c) and discussed more fully below.

This rule of construction strikes a balance between giving companies flexibility to allow different entities within the affiliated group to provide the notice while ensuring that the notice

[8] *See* 68 FR at 4594.

[9] If the principal is a financial institution, and the agent sending the notice is not an affiliate, the agent would only be permitted to use the information for limited purposes under the GLB Act privacy regulations. 16 CFR 313.11(a)(1).

provided to the consumer is meaningful and designed to be effective. Thus, an opt-out notice provided to the consumer solely in the name of an affiliate that receives eligibility information but that is not known or recognizable to the consumer as an entity with which the consumer does or has done business is not likely to be an effective notice. For example, if the consumer has a relationship with the ABC affiliate, but the opt-out notice is provided solely in the name of the XYZ affiliate—which does not share a common name with the ABC affiliate—the notice is not likely to be effective. Indeed, many consumers may disregard a notice from the XYZ affiliate on the assumption that the notice is unsolicited junk mail. If, however, the consumer has a relationship with the ABC affiliate, and the opt-out notice is provided jointly in the name of all affiliated companies that share the ABC name and the XYZ name, the notice is likely to be effective.

The second rule of construction makes clear that it is not necessary for each affiliate that communicates the same eligibility information to provide an opt-out notice to the consumer, so long as the notice provided by the affiliate that initially communicated the information is broad enough to cover use of that information by each affiliate that receives and uses it to make solicitations. For example, if affiliate A communicates eligibility information to affiliate B, and affiliate B communicates that same information to affiliate C, affiliate B does not have to provide the consumer with an opt-out notice, so long as affiliate A's notice is broad enough to cover both B's and C's use of that information to make solicitations to the consumer. Examples are provided to illustrate how the rules of construction work.

Paragraph (a) contemplates that the opt-out notice will be provided to the consumer in writing or, if the consumer agrees, electronically. The Commission notes that the methods discussed above for complying with the statutory ''clear and conspicuous'' provision do not apply to oral notices, and seeks comment on whether (1) there are circumstances in which it is necessary and appropriate to allow an oral notice, and (2) there exists any practical method for meeting the ''clear and conspicuous'' standard in oral notices.

Paragraph (b) sets forth the general duties of an affiliate that receives eligibility information (''the receiving affiliate''). The receiving affiliate may not use eligibility information it receives from an affiliate to make solicitations to the consumer unless, prior to such use, the consumer has been provided an opt-out notice, as described in paragraph (a), that applies to that affiliate's use of eligibility information and a reasonable opportunity and simple method to opt out and the consumer did not opt out of that use.

Paragraphs (a) and (b) focus on whether the information communicated to affiliates meets the definition of ''eligibility information.'' Section 624(a)(1) of the Act concerns ''a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A).'' The Commission has proposed to define ''eligibility information'' in a manner consistent with the statutory definition. The Commission recognizes, however, that there are other exceptions to the statutory definition of ''consumer report,'' such that it may be burdensome for companies to determine and track whether consumer report information is eligibility information (to which the marketing opt-out provisions of section 624 apply) or information that may be shared with affiliates under other exceptions in the FCRA (to which the marketing opt-out provisions of section 624 do not apply). To minimize this burden, the Commission believes that companies may satisfy the requirements of section 624 by voluntarily offering consumers the ability to opt out of marketing based on consumer report information that is shared under any of the exceptions in section 603(d)(2) of the FCRA, not just those in section 603(d)(2)(A), as required by section 624.

Paragraph (c) contains exceptions to the requirements of this regulation. It incorporates each of the following statutory exceptions to the affiliate marketing notice and opt-out requirements set forth in section 624(a)(4) of the FCRA: (1) Using the information to make a solicitation to a consumer with whom the affiliate has a pre-existing business relationship; (2) using the information to facilitate communications to an individual for whose benefit the affiliate provides employee benefit or other services under a contract with an employer related to and arising out of a current employment relationship or an individual's status as a participant or beneficiary of an employee benefit plan; (3) using the information to perform services for another affiliate, unless the services involve sending solicitations on behalf of the other affiliate and such affiliate is not permitted to send such solicitations itself as a result of the consumer's decision to opt out; (4) using the information to make solicitations in response to a communication initiated by the consumer; (5) using the information to make solicitations in response to a consumer's request or authorization for a solicitation; or (6) if compliance with the requirements of section 624 by the affiliate would prevent that affiliate from complying with any provision of state insurance laws pertaining to unfair discrimination in a state where the affiliate is lawfully doing business. Several of these exceptions are discussed below.

Proposed paragraph (c)(1) clarifies that the provisions of this subpart do not apply where the affiliate using the information to make a solicitation to a consumer has a ''pre-existing business relationship'' with that consumer, a key term discussed in detail above. Proposed paragraph (d)(1) provides examples of the pre-existing business relationship exception.

Proposed paragraph (c)(3) clarifies that the provisions of this part do not apply where the information is used to perform services for another affiliate, except that the exception does not permit the service provider to make or send solicitations on behalf of itself or an affiliate if the service provider or the affiliate, as applicable, would not be permitted to make or send such solicitations as a result of the consumer's election to opt out. Thus, when the notice has been provided to a consumer and the consumer has opted-out, an affiliate subject to the consumer's opt-out election that has received eligibility information from a person that has a relationship with the consumer may not circumvent the opt-out by instructing the person with the consumer relationship or another affiliate to make or send solicitations to the consumer on its behalf. The Commission requests comment on whether there are other means of circumvention that the final rule should also address.

Proposed paragraph (c)(4) incorporates the statutory exception for information used in response to a communication initiated by the consumer. The proposed rule clarifies that this exception may be triggered by an oral, electronic, or written communication initiated by the consumer. To be covered by the proposed exception, use of eligibility information must be responsive to the communication initiated by the consumer. For example, if a consumer calls an affiliate to ask about retail locations and hours, the affiliate may not then use eligibility information to make solicitations to the consumer about specific products because those solicitations would not be responsive to the consumer's communication.

Conversely, if the consumer calls an affiliate to ask about its products or services, then solicitations related to those products or services would be responsive to the communication and thus permitted under the exception. The time period during which solicitations remain responsive to the consumer's communication will depend on the facts and circumstances. The proposal also contemplates that a consumer has not initiated a communication if an affiliate makes the initial call and leaves a message for the consumer to call back, and the consumer responds. Proposed paragraph (d)(2) provides examples of the consumer-initiated communications exception.

Proposed paragraph (c)(5) provides that the provisions of this subpart do not apply where the information is used to make solicitations affirmatively authorized or requested by the consumer. This provision may be triggered by an oral, electronic, or written authorization or request by the consumer. Under the proposal, a pre-selected check box or boilerplate language in a disclosure or contract would not constitute an affirmative authorization or request.

The exception in paragraph (c)(5) could be triggered, for example, if a consumer obtains a mortgage from a mortgage lender and authorizes or requests to receive solicitations about homeowner's insurance from an insurance affiliate of the mortgage lender. Under this exception, the consumer may provide the authorization or make the request either through the person with whom the consumer has a business relationship or directly to the affiliate that will make the solicitation. In addition, the duration of the authorization or request will depend on the facts and circumstances. Finally, nothing in this exception supercedes the restrictions contained in the Telemarketing Sales Rule, including the ''Do-Not-Call List'' established by the FTC and the Federal Communications Commission. Proposed paragraph (d)(3) provides an example of the affirmative authorization or request exception.

The exceptions in proposed paragraphs (c)(1), (4), and (5) described above overlap in certain situations. For example, if a lender's customer makes a telephone call to the lender's insurance affiliate and requests information about homeowner or auto policies, the insurance affiliate may use information about the consumer it obtains from the lender to make or send solicitations in response to the telephone call initiated by the consumer under the exception in paragraph (c)(4) for responding to a communication initiated by the consumer. In addition, the consumer's request for information from the insurance affiliate triggers the exceptions in paragraph (c)(1) for inquiries by the consumer regarding a product or service offered by the insurance affiliate under the statutory definition of a ''pre-existing business relationship'' as well as the exception in paragraph (c)(5) for a use in response to a solicitation requested by the consumer.

Proposed paragraph (e) provides that the provisions of this part do not apply to eligibility information that was received by an affiliate prior to the date on which compliance with these regulations is required. This incorporates a limitation contained in the statute. The mandatory compliance date will be included in the final rule. Comment is requested on what the mandatory compliance date should be and whether it should be different from the effective date of the final regulations.

Finally, proposed paragraph (f) clarifies the relationship between the affiliate sharing notice and opt-out under section 603(d)(2)(A)(iii) of the FCRA and the affiliate marketing notice and opt-out in new section 624 of the Act. Specifically, it provides that nothing in 16 CFR Part 680 (these affiliate marketing regulations) limits the responsibility of a company to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information with an affiliate, in order to avoid becoming a consumer reporting agency.

Section 680.21—Contents of Opt-Out Notice

Proposed § 680.21 addresses the contents of the opt-out notice. Proposed paragraph (a) requires that the opt-out notice be clear, conspicuous, and concise, and accurately disclose: (1) That the consumer may elect to limit a person's affiliate from using eligibility information about the consumer that it obtains from that person to make or send solicitations to the consumer; (2) if applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and (3) a reasonable and simple method for the consumer to opt out. (The notice will specify the actual length of time the consumer's election will apply.) Use of the model form in Appendix A, in appropriate circumstances, would comply with paragraph (a), but is not required. Paragraph (a) reflects the intent of Congress, as expressed in section 624(a)(2)(B) of the FCRA, that the notice required by this part must be ''clear, conspicuous, and concise,'' and that the method for opting-out must be ''simple.''

Proposed paragraph (b) defines the term ''concise'' to mean a reasonably brief expression or statement. Paragraph (b) also provides that a notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law. Such disclosures include, but are not limited to, a notice under the GLB Act, a notice under section 603(d)(2)(A)(iii) of the FCRA, and other similar consumer disclosures. Finally, paragraph (b) clarifies that the requirement for a concise notice would be satisfied by the appropriate use of one of the model forms contained in Appendix A to this part, although use of the model forms is not required.

Proposed paragraph (c) provides that the notice may allow a consumer to choose from a menu of alternatives when opting out, such as by selecting certain types of affiliates, certain types of information, or certain modes of delivery from which to opt out, so long as one of the alternatives gives the consumer the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivering solicitations.

Proposed paragraph (d) provides that, where a company elects to give consumers a broader right to opt out of marketing than is required by law, the company may modify the contents of the opt-out notice to reflect accurately the scope of the opt-out right it provides to consumers. Appendix A provides Model Form A–3 that may be helpful for companies that wish to allow consumers to prevent all marketing from the company and its affiliates, but use of the model form is not required.

Section 680.22—Reasonable Opportunity To Opt Out

Proposed paragraph (a) provides that before the affiliate uses the eligibility information to make or send solicitations to the consumer, the person that communicates such eligibility information to the affiliate must provide the consumer with a reasonable opportunity to opt out following delivery of the opt-out notice. Given the variety of circumstances in which companies must provide a reasonable opportunity to opt out, the Commission believes that a reasonable opportunity to opt out should be construed as a general test that avoids setting a mandatory waiting period in all cases. A general

standard would provide flexibility to allow affiliates to use eligibility information received from another affiliate to make or send solicitations at an appropriate point in time which may vary depending upon the circumstances, while assuring that the consumer is given a realistic opportunity to prevent such use of this information. The Commission also believes that providing examples for what constitutes a reasonable opportunity to opt out may be useful by illustrating how the opt-out might work in different situations and by providing a safe harbor for opt-out periods of 30 days in certain situations. Although 30 days is a safe harbor, a person subject to this requirement may decide, at its option, to give consumers more than 30 days in which to decide whether or not to opt-out. Whether a shorter waiting period would be adequate in certain situations depends on the circumstances.

Proposed paragraphs (b)(1) and (2) contain examples of reasonable opportunities to opt out by mail or by electronic means that parallel examples used in the GLB Act privacy rules. The example of a reasonable opportunity to opt out for notices given by electronic means in paragraph (b)(2) is triggered by the consumer's acknowledgment of receipt of the electronic notice, consistent with an example in the GLB Act privacy regulations. 16 CFR 313.10(a)(3)(iii). Of course, these examples assume the consumer has agreed to electronic delivery under proposed § 680.23(a)(3).

Proposed paragraph (b)(3) would provide an example of a reasonable opportunity to opt out where, in a transaction that is conducted electronically, the consumer is required to decide, as a necessary part of proceeding with the transaction, whether or not to opt out before completing the transaction, so long as the company provides a simple process right at the Internet Web site that the consumer may use at that time to opt out. In this example, the opt-out notice would automatically be provided to the consumer, such as through a non-bypassable link to an intermediate webpage, or ''speedbump.'' The consumer would be given a choice of either opting-out or not opting-out at that time through a simple process conducted at the web site. For example, the consumer could be required to check a box right at the Internet web site in order to opt out or decline to opt out before continuing with the transaction. However, this example would not cover a situation where the consumer is required to send a separate e-mail or visit a different Internet Web site in order to opt out. The Commission seeks comment on whether this is a good example of a reasonable opportunity to opt out, and whether additional protections or clarifications are needed. Proposed paragraph (b)(4) illustrates that including the affiliate marketing opt-out notice in a notice under the GLB Act will satisfy the reasonable opportunity standard. In such cases, the consumer should be allowed to exercise the opt-out in the same manner and be given the same amount of time to exercise the opt-out as is provided for any other opt-out provided in the GLB Act privacy notice. This example is consistent with the statutory requirement that the Commission consider methods for coordinating and combining notices.

Proposed paragraph (b)(5) illustrates how an ''opt-in'' can meet the requirement to provide a reasonable opportunity to opt out. Specifically, if a company has a policy of not allowing its affiliates to use eligibility information to market to consumers without the consumer's affirmative consent, providing the consumer with an opportunity to ''opt in'' or affirmatively consent to such use constitutes a reasonable opportunity to opt out. The Commission views the term ''affirmative'' to mean a knowing action by the consumer to receive marketing solicitations. The requirement that the company must ''document'' the consumer's consent is not satisfied by a paragraph in a lengthy form provided to the consumer, but rather requires evidence that the opt-in was a conscious choice by the consumer. The paragraph specifies one example of an ostensible opt-in that would not be evidence of the consumer's affirmative consent—a pre-selected check box.

The proposed regulations do not require companies subject to this rule to disclose in their opt-out notices how long a consumer has to respond to the opt-out notice before eligibility information communicated to other affiliates will be used to make or send solicitations to the consumer. Companies, however, have the flexibility to include such disclosures in their notices. In this respect, the proposed regulations are consistent with the GLB Act privacy regulations. The Commission solicits comment on whether companies subject to the proposed rule should be required to disclose in their opt-out notices how long a consumer has to respond to the opt-out notice. If so, why? If not, why not?

Section 680.23—Reasonable and Simple Methods of Opting Out

Proposed paragraph (a) sets forth reasonable and simple methods of opting out. These examples generally track the examples of reasonable opt-out means from the GLB Act privacy regulations with certain revisions to give effect to Congress's mandate that methods of opting-out be simple. See 16 CFR 313.7(a)(2)(ii). For simplicity, the example in paragraph (a)(2) contemplates including a self-addressed envelope with the reply form and opt-out notice. In regard to the example in paragraph (a)(4) of a toll-free telephone number that consumers can call to opt out, the Commission contemplates that it would be adequately designed and staffed, as necessary, to enable consumers to opt out in a single phone call.

Proposed paragraph (b) sets forth methods of opting-out that are not reasonable and simple. Such methods include requiring the consumer to write a letter to the company or to call or write to obtain an opt-out form rather than including it with the notice. In addition, a consumer who agrees to receive the opt-out notice in electronic form only, such as by electronic mail or a process at a web site, should be allowed to opt out by the same or a substantially similar electronic form and should not be required to opt out solely by telephone or paper mail.

Section 680.24—Delivery of Opt-Out Notices

Proposed paragraph (a) provides that a company must deliver an opt-out notice so that each consumer can reasonably be expected to receive actual notice. For opt-out notices delivered electronically, the notices may be delivered either in accordance with the electronic disclosure provisions in this subpart or in accordance with the Electronic Signatures in Global and National Commerce Act.[10] Under the example in proposed paragraph (b)(1)(iii), the company may e-mail its notice to a consumer who has agreed to the electronic delivery of information or provide the notice on its Internet web site for the consumer who obtains a product or service electronically from that web site. That example is virtually identical to an example in the GLB Act Privacy Rule. 16 CFR 313.9(b)(1)(iii).

As indicated by the examples provided in proposed paragraph (b), the

[10] Pub. L. No. 106–229, 114 Stat. 464 (2000). Because nothing in Section 624 of the Act requires that the notice be provided in writing, the ESIGN Act's provisions requiring consumer consent to electronic delivery of the FCRA opt-out notices would not apply.

standard described in paragraph (a) is a lesser standard than actual notice. For instance, if a person subject to the rule mails a printed copy of its notice to the last known mailing address of a consumer, the person has met its obligation even if the consumer has changed addresses and never receives the notice.

Proposed paragraph (c) permits a person subject to this rule to provide a joint opt-out notice with one or more of its affiliates that are identified in the notice, so long as the notice is accurate with respect to each affiliate jointly issuing the notice. A joint notice does not have to list each affiliate participating in the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all companies with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify that company or family of companies with a common name.

Proposed paragraph (d)(1) sets out rules that apply when two or more consumers jointly obtain a product or service from a person subject to this rule (referred to in the proposed regulation as joint consumers), such as a loan to two consumers (joint debtors). For example, a lender subject to this rule may provide a single opt-out notice to two joint debtors. The notice must indicate whether the person will consider an opt-out by one joint debtor as an opt-out by both, or whether each consumer may opt out separately. The person may not require both consumers to opt out before honoring an opt-out direction by one of them. Paragraph (d)(2) gives examples of these rules.

Proposed paragraph (d)(1)(vii) and the example in paragraph (d)(2)(iii) address the situation where only one of two joint consumers has opted out. Those paragraphs are derived from similar provisions in the GLB Act privacy regulations. Because section 624 of the FCRA deals with the use of information for marketing by affiliates, rather than the sharing of information among affiliates, comment is requested on whether information about a joint account should be allowed to be used for making solicitations to a joint consumer who has not opted out.

Section 680.25—Duration and Effect of Opt-Out

Proposed § 680.25 addresses the duration and effect of the consumer's opt-out election. Proposed paragraph (a) provides that the consumer's election to opt out shall be effective for the opt-out period, which is a period of at least 5 years, beginning as soon as reasonably practicable after the consumer's opt-out election is received. Nothing in this paragraph limits the ability of affiliated persons to set an opt-out period longer than 5 years, including an opt-out period that does not expire unless revoked by the consumer. No opt-out period, however, may be less than 5 years. In addition, if a consumer elects to opt out every year, a new opt-out period of at least 5 years begins upon receipt of each successive opt-out election.

Proposed paragraph (b) provides that a receiving affiliate may not make or send solicitations to a consumer during the opt-out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 680.20(c) or if the opt-out is revoked by the consumer. Under this paragraph, the opt-out is tied to the consumer, not to the information. Thus, if a consumer initially elects to opt out, but does not extend the opt-out upon expiration of the opt-out period, a receiving affiliate may use all eligibility information it has received about the consumer from its affiliate, including eligibility information that it received during the opt-out period. However, if the consumer subsequently opts out again some time after the initial opt-out period has lapsed, a receiving affiliate may not use any eligibility information about the consumer it has received from an affiliate on or after the mandatory compliance date for the regulations under this part, including information it received during the period in which no opt-out election was in effect.[11]

Proposed paragraph (c) clarifies that a consumer may opt out at any time. Thus, even if the consumer did not opt out in response to the initial opt-out notice or if the consumer's election to opt out is not prompted by an opt-out notice, a consumer may still opt out. Regardless of when the consumer opts out, the opt-out must be effective for a period of at least 5 years.

Proposed paragraph (d) describes how the termination of a consumer relationship affects the consumer's opt-out. Specifically, if a consumer's relationship with a company terminates for any reason when a consumer's opt-out election is in force, the opt-out will continue to apply indefinitely, unless revoked by the consumer.

[11] Section 624(a)(5) of the FCRA is a non-retroactivity provision, which states that nothing shall prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with the regulations implementing section 624.

Section 680.26—Extension of Opt-Out

Proposed § 680.26 describes the procedures for extension of an opt-out. Proposed paragraph (a) provides that a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt-out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt-out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt-out, and the consumer does not extend the opt-out. If an extension notice is not provided to the consumer, the opt-out period continues indefinitely. The requirement to provide an extension notice also applies when a consumer fails to opt out initially, but at a subsequent point in time informs the company of his or her decision to opt out, which would be effective for a period of at least 5 years. The consumer may extend the opt-out at the expiration of each successive opt-out period. Paragraph (b) also provides that each opt-out extension must comply with § 680.25(a), which means that it must be effective for a period of at least 5 years.

Proposed paragraph (c) addresses the contents of an extension notice. A notice under paragraph (c) must be clear and conspicuous, and concise. Paragraph (c) provides some flexibility in the design and contents of the notice. Under one approach, the notice must accurately disclose the same items required to be disclosed in the initial opt-out notice under § 680.21(a), along with a statement explaining that the consumer's prior opt-out has expired or is about to expire, as applicable, and that if the consumer wishes to keep the consumer's opt-out election in force, the consumer must opt out again. Under another approach, the extension notice would provide that: (1) The consumer previously elected to limit an affiliate from using eligibility information about the consumer that it obtains from the communicating affiliate to make or send solicitations to the consumer; (2) the consumer's election has expired or is about to expire, as applicable; (3) the consumer may elect to extend the consumer's previous election; and (4) a reasonable and simple method for the consumer to opt out. The Agencies propose to give companies the flexibility to decide which of these notices best meets their needs.

Companies do not need to provide extension notices if they treat the consumer's opt-out election as valid in perpetuity, unless revoked by the consumer. Comment is requested on whether companies plan to limit the

duration of the opt-out or not, and on the relative burdens and benefits of the two approaches.

Proposed paragraph (d) addresses the timing of the extension notice and provides that an extension notice can be given to the consumer either a reasonable period of time before the expiration of the opt-out period, or any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer. Providing the extension notice a reasonable period of time before the expiration of the opt-out period is appropriate to facilitate the smooth transition of consumers that choose to change their election.

An extension notice given too far in advance of the expiration of the opt-out period, however, may be confusing to consumers. The Commission does not propose to set a fixed time for what would constitute a reasonable period of time before the expiration of the opt-out period to send an extension notice, because a reasonable period of time may depend upon the amount of time afforded to the consumer for a reasonable opportunity to opt out, the amount of time necessary to process opt-outs, and other factors. Nevertheless, providing an extension notice on or with the last annual privacy notice required by the GLB Act privacy provisions sent to the consumer before the expiration of the opt-out period shall be deemed reasonable in all cases. Proposed paragraph (e) makes clear that sending an extension notice to the consumer before the expiration of the opt-out period does not shorten the 5-year opt-out period.

Including an affiliate marketing opt-out notice or an extension notice on an initial or annual notice under the GLB Act raises special issues, because GLB Act notices typically state that the consumer does not need to opt out again if the consumer previously opted-out. This statement would be accurate if the company and its affiliates choose to make the affiliate marketing opt-out effective in perpetuity. However, if the opt-out period is limited to a defined period of 5 years or more, such a statement would not be accurate with respect to the extension notice, and the notice would have to make clear to the consumer the necessity of opting-out again in order to extend the opt-out.

Section 680.27—Consolidated and Equivalent Notices

Proposed § 680.27 implements section 624(b) of the Act, and provides that a notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the notice required by title V of the GLB Act. A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart.

Comment is solicited on whether the affiliate marketing notice will be consolidated with the GLB Act privacy notice or the affiliate sharing opt-out notice under section 603(d)(2)(A)(iii) of the FCRA, whether the Agencies have provided sufficient guidance on consolidated notices, and whether consolidation would be helpful to consumers.

Effective Date

Consistent with the requirements of section 624 of the FACT Act, the proposed regulations will become effective 6 months after the date on which they are issued in final form. The Commission requests comment on whether there is any need to delay the compliance date beyond the effective date, to permit financial institutions to incorporate the affiliate marketing notice into their next annual GLB Act notice.

Appendix A

The Commission is proposing model forms to illustrate by way of example how companies may comply with the notice and opt-out requirements of section 624 and the proposed regulations. Ideally, the Commission would test the proposed model forms both alone and in conjunction with other opt-out notices under the FCRA and GLB Act. Because consumer testing is unlikely to be undertaken and completed before this rule is issued in final form, we solicit comment on these proposals at this time.

Appendix A includes three proposed model forms. Model Form A–1 is a proposed form of an initial opt-out notice. Model Form A–2 is a proposed form of an extension notice. Model Form A–3 is a proposed form that companies may use if they offer consumers a broader right to opt out of marketing than is required by law.

Use of the model forms is not mandatory. Companies have the flexibility to use or not use the model forms, or to modify the forms, so long as the requirements of the regulation are met. For example, although Model Forms A–1 and A–2 use 5 years as the duration of the opt-out period, companies are free to choose an opt-out period of longer than 5 years and substitute the longer time period in the opt-out notices. Alternatively, companies may choose to treat the consumer's opt-out as effective in perpetuity and thereby omit any reference to the limited duration of the opt-out period or the right to extend the opt-out in the initial opt-out notice.

Each of the proposed model forms is designed as a stand-alone form. The Commission anticipates that some companies that are financial institutions subject to the GLB Act may want to combine the opt-out form with the privacy notice required by that law. If so combined, the Commission expects that companies would integrate the affiliate marketing opt-out notice with other required disclosures and avoid repetition of certain information, such as the methods for opting-out. Developing a model form that combines various opt-out notices, however, is beyond the scope of this rulemaking.

The proposed model forms have been designed to convey the necessary information to consumers as simply as possible. The Commission and other Agencies have tested the proposed model forms using two widely available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test, each of which generates a score.[12] Proposed Model Form A–1 has a Flesch reading ease score of 53.7 and a Flesch-Kincaid grade level score of 9.9. Proposed Model Form A–2 has a Flesch reading ease score of 57.5 and a Flesch-Kincaid grade level score of 9.6. Proposed Model Form A–3 has a Flesch reading ease score of 69.9 and a Flesch-Kincaid grade level score of 6.7.

The Commission recognizes the benefits of working with communications experts and conducting consumer testing to achieve better and more readable consumer opt-out notices. Comment is solicited on the form and content of the proposed model forms based on commenters' work with communications experts and experience with consumer testing. Comment is also requested on whether companies would combine the affiliate marketing notice with other opt-out notices or issue a separate affiliate marketing opt-out notice, and how those two approaches may affect consumer comprehension of the notices and their rights. In developing a final rule, the Commission will carefully consider any consumer

[12] The Flesch reading ease test generates a score between zero and 100, where the higher score correlates with improved readability. The Flesch-Kincaid grade level test generates a numerical assessment of the grade-level at which the text is written.

testing that may suggest ways to improve the proposed model forms, including efforts by consumer groups and industry, as well as the Commission's own initiative to consider alternative forms of privacy notices under the GLB Act. *See* 68 FR 75164 (Dec. 30, 2003).

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR. 1.26(b)(5).

V. Paperwork Reduction Act

The Commission has submitted this proposed rule and a Supporting Statement to the Office of Management and Budget for review under the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3517). As required by the FACT Act, the proposed rule specifies disclosure requirements for certain affiliated companies subject to the Commission's jurisdiction. These requirements may constitute ''collections of information'' for purposes of the PRA. *See* 5 CFR 1320.3(c). The FACT Act and the proposed rule require covered entities to provide consumers with notice and an opportunity to opt out of the use of certain information for sending marketing solicitations. The proposed rule generally provides that, if a company communicates certain information about a consumer (''eligibility information'') to an affiliate, the affiliate may not use that information to make or send solicitations to the consumer unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Where the company has chosen to set a limited time period for the opt-out (no less than 5 years), the company must provide prior to the expiration of the opt-out, a notice that the consumer has a right to extend the opt-out for an additional period of time of at least 5 years (''extension notice''). There are a number of exceptions to these requirements. Moreover, although its disclosure requirements are expressly required by the FACT Act, the Commission's proposed rule provides flexibility in implementing these requirements.

The Commission's staff does not know how many companies subject to the FTC's jurisdiction under the proposed rule actually share eligibility information among affiliates and use such information to make marketing solicitations to consumers. The estimates provided in this paperwork burden analysis, therefore, may well overstate the actual burden. The entities covered by the proposed rule include firms from a wide variety of industries engaged in business with consumers, including non-bank lenders, insurers, retailers, landlords, mortgage brokers, automobile dealers, telecommunication firms, and any other businesses that may communicate what the proposed rule defines as ''eligibility information'' to their affiliates.

The Commission's staff estimates that there are 7.7 million businesses that are subject to the FTC's jurisdiction, because they are not subject to the jurisdiction of one of the other Agencies responsible for enforcing the FACT Act.[13] The staff estimates that some 7.6 million of these are non-GLBA entities [14] and subject to the FTC's jurisdiction. Because the proposed rule addresses the practices only of affiliated companies, the staff estimates that 16.75 percent, or 1.2 million non-GLBA companies, are in affiliated relationships and thus potentially subject to the proposed rule.[15] The staff further estimates that there are an average of 5 businesses per family or affiliated relationship, and that affiliated entities will choose to send a joint notice as permitted by the proposed rule. Thus, an estimated 238,000 non-GLBA entities may send the new affiliate marketing notice.

Non-GLBA companies that will need to send a notice, however, should not incur significant start-up burdens and attendant costs, because the proposed rule provides a model disclosure, which should reduce costs significantly. Therefore, the staff estimates the hour burden for non-GLBA companies to be 3,335,000 hours and the cost burden to be $81,072,000 for the first year of the clearance period, which includes the start-up burden and attendant costs, such as determining compliance obligations.[16] The staff estimates that the paperwork burden in subsequent years will be significantly lower because creating the notice is generally a one-time cost that will have already been incurred.[17] Thus, staff estimates the annual burden for the non-GLBA entities, averaged over the three year clearance period, to be 2,699,000 hours and $62,656,000. Moreover, this estimate is likely to overstate the actual burden because a number of non-GLBA companies provide notices and opt-out choices voluntarily as a service to their customers, and many businesses may not even share eligibility information to market to consumers. The number of such companies, however, is not known at this time.

Staff estimates that about 100,000 entities are subject to the Commission's GLBA privacy notice regulation and, therefore, already provide privacy notices to their customers. Because the proposed rule addresses the practices only of affiliated companies, the staff estimates that 16.75 percent of the GLBA companies, or 16,750 companies, are affiliated entities subject to the new notice requirement.[18] As noted above, the staff is estimating that there are an average of 5 businesses per family or affiliated relationship, and that affiliated entities will choose to send a joint notice as permitted by the proposed rule. Thus, an estimated 3,350 GLBA companies may send the new affiliate marketing notice.

Because the FACT Act and proposed rule contemplate that the new affiliate marketing notice can be included in the GLBA notices, the burden on GLBA-regulated entities is greatly reduced. Costs are also reduced because the proposed rule provides model notices. Therefore, the staff estimates that incorporating the new disclosure into the GLBA notice will take approximately 5 hours of managerial time to understand the compliance obligations and only an hour to execute the notice, given that the proposed rule provides a model. No additional clerical costs should be incurred, if the new disclosure is combined with the GLBA notices. So, for the approximately 3,350 affiliated GLBA entities under the FTC's jurisdiction, the total burden hours for

[13] This estimate is derived from an analysis of a database of U.S. businesses based on SIC codes for businesses that market goods or services to consumers, which included the following industries: transportation services; communication; electric, gas, and sanitary services; retail trade; finance, insurance, and real estate; and services (excluding business services and engineering, management services).

[14] Staff estimates that about 100,000 entities are subject to the Commission's GLBA privacy notice regulation. The paperwork burden for GLBA entities has been analyzed separately.

[15] *See*, note 13.

[16] The estimate of hours is based upon 7 hours of managerial skills at $31.55 per hour, 2 hours of technical skills at $26.44 per hour, and 5 hours of clerical skills at $13.33 per hour, which totals 14 hours per affiliated family of companies. (Bureau of Labor Statistics, Table 1, July 2002; *http://www.bls.gov/ncs/ocs/sp/ncbl0539.pdf*).

[17] Staff estimates that in subsequent years, non-GLBA companies will spend 4 hours of managerial time, 1 hour of technical time, and 5 hours of clerical time per affiliated family of companies. Thus the annual burden for the remaining two years of the clearance will be 2,382,000 hours and $53,448,000.

[18] *See*, note 13.

the first year of the clearance period are estimated to be 20,000 hours and the total costs $617,000.[19] The staff has estimated that the paperwork burden in subsequent years will be lower because creating the notice is generally a one-time cost that will have already been incurred.[20] Thus, the staff estimates the annual burden for the GLBA entities, averaged over the three year clearance period, to be 15,600 hours and $487,500.

In sum, the staff has estimated that the average annual burden over the first three years for both GLBA and non-GLBA companies to be 2,715,000 in burden hours and $63,144,000 in labor costs.

The Commission invites comment that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections 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 must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

VI. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Comments must be received on or before July 20, 2004. Comments should refer to ''FACT Act Affiliate Marketing Rule, Matter No. R411006'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[21] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) Clicking on *http://www.regulations.gov*; (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions. Such comments should also be sent to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis and requests public comment in the following areas.

A. Reasons for the Proposed Rule

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations. Section 214 also requires the Agencies, including the Commission, in consultation and coordination with each other, to issue regulations implementing the section that are as consistent and comparable as possible. The FTC is publishing its proposed rule separately from the other Agencies, but it is comparable in all substantive respects to the proposed rule published by the other Agencies.

B. Statement of Objectives and Legal Basis

The objectives of the proposed Rule are discussed in the **SUPPLEMENTARY INFORMATION** section above. The legal basis for the proposed rule is section 214 of the FACT Act.

[19] These estimates are based on 5 hours of managerial time at $31.55 per hour ($157.75) and one hour of technical time at $26.44 per hour. (Bureau of Labor Statistics, Table 1, July 2002; *http://www.bls.gov/ncs/ocs/sp/ncbl0539.pdf*)

[20] Staff estimates that in subsequent years, GLBA companies will spend 3 hours of managerial time, 1 hour of technical time. No clerical time is estimated as the notice will likely be combined with existing GLBA notices. Thus the annual burden for the remaining two years of clearance will be 13,400 hours and $422,800.

[21] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

C. Description of Small Entities to Which the Proposed Rule Will Apply

The FTC's proposed affiliate marketing rule, which closely tracks the language of section 214 of the FACT Act, would apply to ''[a]ny person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A).'' In short, section 214 applies to any entity that (1) is under the FTC's jurisdiction pursuant to the FCRA and (2) receives consumer report information from an affiliate and uses that information to make a marketing solicitation to the consumer.

As discussed above, the entities covered by the proposed rule would include non-bank lenders, insurers, retailers, landlords, mortgage brokers, automobile dealers, telecommunication firms, and any other business that shares eligibility information with its affiliates. It is not readily feasible to determine a precise number of small entities that will be subject to the proposed rule, but it is not likely that many of the entities covered by this new rule are small as defined by the Small Business Administration since most of the entities with affiliates are likely to be above the $6 M level. *See http://www.sba.gov/size/indextableofsize.html*. The Commission invites comment and information on the number and type of small entities affected by the proposed rule.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule requires entities subject to section 624 of the FCRA to provide consumers notice and an opportunity to opt out of affiliates' use of the shared information for marketing solicitations. For those entities that provide the section 624 notice consolidated with the GLBA notices or other federally-mandated disclosures, the proposed rule imposes very limited additional reporting or recordkeeping requirements within the meaning of the PRA, as discussed above. However, for those entities that choose to send the notices separately, or that are not subject to the GLB Act, the reporting and recordkeeping requirements here may be substantial. The Commission, however, does not have a practicable or reliable basis for quantifying the costs of the proposed rule.

Any analysis of the impact of this law and its implementing regulation must take into consideration that it is rather limited in its scope. First, the new law only applies to the use by affiliates of shared information for sending marketing solicitations. Thus, affiliates that do marketing based solely upon their own information are not affected by this law. Second, the new law provides for a number of exceptions, including permitting entities to market to consumers with whom they have a ''pre-existing business relationship'' or from whom they have received a specific request, orally, electronically, or in writing for information. And finally, the new law also permits entities to market to the general public without triggering the notice and opt-out obligations.

A number of alternatives exist, however, to reduce the costs presented by compliance with the proposed rule. First, significant cost savings may be obtained by consolidating these notices with the GLBA privacy notice. Consolidated notices may also be less confusing to consumers. In addition, the Agencies have included model forms for opt-out notices that the Agencies would deem to comply with the requirements of the proposed regulation and that entities could customize to suit their needs. Furthermore, the proposal would permit companies to offer consumers a permanent opt-out from the sharing of information for making or sending solicitations among affiliates, which would be consistent with the GLBA and FCRA opt-outs and would reduce recordkeeping requirements. Small entities, therefore, may wish to consider whether consolidation of their notices and opt-outs can reduce their compliance costs.

Affiliates that communicate or receive eligibility information will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training. Tracking the notice and opt-outs to prevent violations of the rule may not be a significant burden on any entity using database software to maintain their customer information. Such software should enable an entity to easily tag the customer database information with the opt-out requirement. The use of technology to track the opt-outs may reduce the costs of implementation.

The Commission is concerned about the potential impact of the proposed rule on small entities, and invites comment on the costs of compliance for such parties. Please provide comment on any or all of the provisions in the proposed rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities in light of the above analysis. Costs to implement and comply with the rule include expenditures of time and money for any employee training, attorney, or other professional time and preparing and processing the notices.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

With the exception of the opt-out for information other than transaction or experience information in section 603(d)(2)(A)(iii), the Commission is unable to identify any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The overlap of the proposed rule and section 603(d)(2)(A)(iii) is discussed in the **SUPPLEMENTARY INFORMATION** section. The Commission seeks comment regarding any other statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

F. Discussion of Significant Alternatives

The Commission has considered whether and how the obligations of section 624 can be modified to address the concerns of small entities. Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. As discussed above in section D of this subpart, the law's limited scope (including the threshold requirement that it be an affiliated entity) reduces the burden on small entities, as do a number of implementation procedures provided for in the proposed rule.

The Commission welcomes comments on any significant alternatives, consistent with the mandate in section 214 to restrict the use of certain information for marketing solicitations, that would minimize the impact of the proposed rule on small entities.

List of Subjects in 16 CFR Part 680

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

Accordingly, for the reasons set forth in the preamble, the FTC proposes to add a new 16 CFR Part 680, to read as follows:

PART 680—AFFILIATE USE OF INFORMATION FOR MARKETING PURPOSES

Sec.
680.1 Purpose and scope
680.2 Examples
680.3 Definitions
680.4–680.19 [Reserved]
680.20 Affiliate use of eligibility information for marketing solicitations
680.21 Contents of opt-out notice
680.22 Reasonable opportunity to opt out
680.23 Reasonable and simple methods of opting out
680.24 Delivery of opt-out notices
680.25 Duration and effect of opt-out
680.26 Extension of opt-out
680.27 Consolidated and equivalent notices

Appendix A to Part 680

Authority: 15 U.S.C. 1681s; sec. 214, Pub. L. 108–159; 117 Stat. 1952.

§ 680.1 Purpose and scope.

(a) *Purpose.* This part implements section 214 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to allow consumers to prohibit (''opt out'' of) the use of certain information about them to send marketing solicitations.

(b) *Scope.* This part applies to any person over which the Federal Trade Commission has jurisdiction that shares information with affiliated persons to make or send marketing solicitations.

§ 680.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 680.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

(g) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply.

(h) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(i) *Pre-existing business relationship* means a relationship between a person and a consumer, based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a solicitation covered by this part is made or sent to the consumer.

(j) *Solicitation*—(1) *In general.* Solicitation means marketing initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in this part; and

(ii) Intended to encourage the consumer to purchase such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products or services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation includes a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(k) *You* includes each person or company over which the Commission has enforcement jurisdiction pursuant to section 621(a)(1) of the Act.

§ 680.4–680.19 [Reserved]

§ 680.20 Affiliate use of eligibility information for marketing solicitations.

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt-out.* If you communicate eligibility information about a consumer to your affiliate, your affiliate may not use the information to make or send solicitations to the consumer, unless prior to such use by the affiliate—

(i) You provide a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by your affiliate to make or send solicitations to the consumer about its products and services;

(ii) You provide the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by your affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *In general.* The notice required by this paragraph may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) You may provide the notice directly to the consumer;

(B) Your agent may provide the notice on your behalf, so long as—

(*1*) Your agent, if your affiliate, does not include any solicitation other than yours on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) Your agent gives the notice in your name or a common name or names used by the family of companies; or

(C) You may provide a joint notice with one or more of your affiliates or under a common corporate name or names used by the family of companies as provided in § 222.24(c).

(ii) *Avoiding duplicate notices.* If Affiliate A communicates eligibility

information about a consumer to Affiliate B, and Affiliate B communicates that same information to Affiliate C, Affiliate B does not have to give an opt-out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with affiliate A, but has never done business with affiliates B or C. Affiliate A communicates eligibility information about the consumer to B for purposes of making solicitations. B communicates the information it received from A to C for purposes of making solicitations. In this circumstance, the rules of construction would—

(A) Permit B to use the information to make solicitations if:

(*1*) A has provided the opt-out notice directly to the consumer; or

(*2*) B or C has provided the opt-out notice on behalf of A.

(B) Permit B or C to use the information to make solicitations if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2*) A, B, or C has provided a joint opt-out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information to make solicitations if B has provided the opt-out notice only in B's own name, because no notice would have been provided by or on behalf of A.

(b) *General duties of an affiliate receiving eligibility information.* If you receive eligibility information from an affiliate, you may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt-out notice, as described in paragraph (a) of this section, that applies to your use of eligibility information and the consumer has not opted-out.

(c) *Exceptions.* The provisions of this subpart do not apply if you use eligibility information you receive from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom you have a pre-existing business relationship as defined in § 680.3(i);

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to make or send solicitations on your behalf or on behalf of an affiliate if you or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result of the election of the consumer to opt out under this part;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If your compliance with this subpart would prevent you from complying with any provision of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Examples of pre-existing business relationships.*

(i) If a consumer has an insurance policy with your insurance affiliate that is currently in force, your insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from you to make solicitations.

(ii) If a consumer has an insurance policy with your insurance affiliate that has lapsed, your insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from you to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to your affiliate for a product or service, or inquires about your affiliate's products or services and provides contact information to your affiliate for receipt of that information, your affiliate has a pre-existing business relationship with the consumer for 3 months after the date of the inquiry or application and can therefore use eligibility information it has received from you to make solicitations for 3 months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's account with a lender, the call does not constitute an inquiry with any affiliate other than that lender, and does not establish a pre-existing business relationship between the consumer and any affiliate of the lender.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with you initiates a telephone call to your securities affiliate to request information about brokerage services or mutual funds and provides contact information for receiving that information, your securities affiliate may use eligibility information about the consumer it obtains from you to make solicitations in response to the consumer-initiated call.

(ii) If your affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by your affiliate.

(iii) If the consumer calls your affiliate to ask about retail locations and hours, but does not request information about your affiliate's products or services, solicitations by your affiliate using eligibility information about the consumer it obtains from you would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains a mortgage from you requests or affirmatively authorizes information about homeowner's insurance from your insurance affiliate, such authorization or request, whether given to you or to your insurance affiliate, would permit your insurance affiliate to use eligibility information about the consumer it obtains from you to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this part shall not prohibit your affiliate from using eligibility information communicated by you to make or send solicitations to a consumer if such information was received by your affiliate prior to [MANDATORY COMPLIANCE DATE PURSUANT TO THE FINAL RULE].

(f) *Relation to affiliate-sharing notice and opt-out.* Nothing in this part limits the responsibility of a company to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the Act, before it shares information other than transaction or experience information among affiliates, in order to avoid becoming a consumer reporting agency.

§ 680.21 Contents of opt-out notice.

(a) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send solicitations to the consumer;

(2) If applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general.* For purposes of this part, the term ''concise'' means reasonably brief.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(3) *Use of model form.* The requirement for a concise notice is satisfied by use of a model form contained in Appendix A of this part, although use of the model form is not required.

(c) *Providing a menu of opt-out choices.* With respect to the opt-out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights. Proposed Model Notice A–3 provided in Appendix A provides guidance, although use of the model notice is not required.

§ 680.22 Reasonable opportunity to opt out.

(a) *In general.* Before your affiliate uses eligibility information communicated by you to make or send solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt-out notice, to opt out of such use by your affiliates.

(b) *Examples of a reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* You mail the opt-out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* You provide the opt-out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* You include the opt-out notice in a Gramm-Leach-Bliley Act privacy notice and allow the consumer to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under the Gramm-Leach-Bliley Act.

(5) *By providing an ''opt-in''.* If you have a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to ''opt in'' by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 680.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting-out.* You provide a reasonable and simple method for a consumer to exercise a right to opt out if you—

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt-out notice required by this part;

(2) Include a reply form and a self-addressed envelope together with the opt-out notice required by this part;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting-out that are not reasonable or simple.* You *do not* provide a reasonable and simple method for exercising an opt-out right if you—

(1) Require the consumer to write his or her own letter to you;

(2) Require the consumer to call or write to you to obtain a form for opting-out, rather than including the form with the notice; or

(3) Require the consumer who agrees to receive the opt-out notice in electronic form only, such as by electronic mail or at your web site, to opt out solely by telephone or by paper mail.

§ 680.24 Delivery of opt-out notices.

(a) *In general.* You must provide an opt-out notice so that each consumer can reasonably be expected to receive actual notice. For opt-out notices you provide electronically, you may either comply with the electronic disclosure provisions in this part or with the provisions in § 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice.* (1) You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from you electronically, such as on an Internet web site, post the notice on your electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular product or service;

(2) You may *not* reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements presenting your notice; or

(ii) Send the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *In general.* You may provide a joint notice from you and one or more of your affiliates, as identified in the notice, so long as the notice is accurate with respect to you and each affiliate.

(2) *Identification of affiliates.* You do not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all companies with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must

separately identify each such affiliate or similarly-named family of companies.

(d) *Joint relationships*— (1) *In general.* If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt-out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either—

(A) Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt-out directions in a single response.

(v) You must explain in your opt-out notice which of the policies in paragraph (d)(1)(iii) you will follow, as well as the information required by paragraph (d)(1)(iv).

(vi) You may not require *all* joint consumers to opt out before you implement *any* opt-out direction.

(vii) If you receive an opt-out by a particular joint consumer that does not apply to the others, you may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint loan account with you and arrange for you to send statements to A's address, you may do any of the following, but you must explain in your opt-out notice which opt-out policy you will follow. You may send a single opt-out notice to A's address and:

(i) Treat an opt-out direction by A as applying to the entire account. If you do so and A opts out, you may not require B to opt out as well before implementing A's opt-out direction.

(ii) Treat A's opt-out direction as applying to A only. If you do so, you must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify you of their opt-out directions in a single response (such as on a single form) if they choose to give separate opt-out directions.

(iii) If A opts out only for A, and B does not opt out, your affiliate may use information only about B to send solicitations to B, but may not use information about A and B jointly to send solicitations to B.

§ 680.25 Duration and effect of opt-out.

(a) *Duration of opt-out.* The election of a consumer to opt out shall be effective for the opt-out period, which is a period of at least 5 years beginning as soon as reasonably practicable after the consumer's opt-out election is received. You may establish an opt-out period of more than 5 years, including an opt-out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt-out.* A receiving affiliate may not make or send solicitations to a consumer during the opt-out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 680.20(c) or if the opt-out is revoked by the consumer.

(c) *Time of opt-out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with you terminates when a consumer's opt-out election is in force, the opt-out will continue to apply indefinitely, unless revoked by the consumer.

§ 680.26 Extension of opt-out.

(a) *In general.* For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt-out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt-out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt-out, and the consumer does not extend the opt-out.

(b) *Duration of extension.* Each opt-out extension shall comply with § 680.25(a).

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 680.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt-out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt-out election in force; or

(2) Each of the items listed below:

(i) That the consumer previously elected to limit your affiliate from using information about the consumer that it obtains from you to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*— (1) *In general.* An extension notice may be provided to the consumer either—

(i) A reasonable period of time before the expiration of the opt-out period; or

(ii) Any time after the expiration of the opt-out period but before any affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt-out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, that is provided to the consumer before expiration of the opt-out period shall be deemed reasonable in all cases.

(e) *No effect on opt-out period.* The opt-out period may not be shortened to a period of less than 5 years by sending an extension notice to the consumer before expiration of the opt-out period.

§ 680.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this part may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this part, and that you provide to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this part.

APPENDIX A TO PART 680—MODEL FORMS FOR OPT-OUT NOTICES

A–1 Model Form for Initial Opt-out Notice
A–2 Model Form for Extension Notice
A–3 Model Form for Initial Opt-out Notice

A–1—Model Form for Initial Opt-Out Notice

Your Choice To Limit Marketing

1. You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

2. [Include if applicable.] Your decision to limit marketing offers from

our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

3. [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

- Call us toll-free at 877-###-####; or
- Visit our Web site at *http://www.websiteaddress.com;* or
- Check the box below and mail it to:

[Company name]

[Company address]

__I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2—Model Form for Extension Notice

Extending Your Choice To Limit Marketing

1. You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

2. Your choice has expired or is about to expire.

3. [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:

- Call us toll-free at 877-###-####; or
- Visit our Web site at *http://www.websiteaddress.com;* or
- Check the box below and mail it to:

[Company name]

[Company address]

__I want to extend my choice for another 5 years.

A–3—Model Form for Voluntary ''No Marketing'' Notice

Your Choice To Stop Marketing

You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:

- Call us toll-free at 877-###-####; or
- Visit our Web site at *http://www.websiteaddress.com;* or
- Check the box on the form below and mail it to:

[Company name]

[Company address]

__I do not want you or your affiliates to send me marketing offers.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–13481 Filed 6–14–04; 8:45 am]

BILLING CODE 6750–01–P

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Material

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to Domestic Mail Manual (DMM) E670.5.5, which sets forth guidelines for determining whether the coverage provided by an insurance policy offered by an authorized nonprofit organization to its members is not generally otherwise commercially available.

DATES: Submit comments on or before July 15, 2004.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington DC 20260–3436. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday. Comments may not be submitted via fax or e-mail.

FOR FURTHER INFORMATION CONTACT: Jerry Lease, Mailing Standards, U.S. Postal Service, (202) 268–7264; or Garry A. Rodriguez, Mailing Standards, U.S. Postal Service, (202) 268–7281.

SUPPLEMENTARY INFORMATION: Authorized organizations are entitled to mail their qualifying materials at the Nonprofit Standard Mail rates (''nonprofit rates''), which are significantly lower than the regular Standard Mail rates. However, the Postal Service Appropriations Act of 1991 limits the types of material that may be sent at the nonprofit rates (originally called the ''special bulk third-class rates''). Among the provisions is one restricting promotional materials for insurance from being mailed at the nonprofit rates unless, among other things, the coverage provided by the policy is ''not generally otherwise commercially available'' (39 U.S.C. 3626(j)(1)(B)).

On June 25, 1992 (57 FR 28464), the Postal Service adopted standards defining the phrase, ''not generally otherwise commercially available,'' for purposes of determining the eligibility of promotional insurance mailed at the nonprofit rates. Those standards, as currently stated in DMM E670.5.4 and 5.5, state that promotional materials pertaining to the coverage provided by insurance policies may not be mailed at the nonprofit rates, ''unless the organization promoting the purchase of such policy is authorized to mail at the Nonprofit Standard Mail rates at the entry post office; the policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization; and the coverage provided by the policy is not generally otherwise commercially available.''

DMM E670.5.5 explains, ''The term not generally otherwise commercially available applies to the actual coverage stated in an insurance policy, without regard to the amount of the premiums, the underwriting practices, and the financial condition of the insurer. When comparisons are made with other policies, consideration is given to policy coverage benefits, limitations, and exclusions, and to the availability of coverage to the targeted category of recipients. When insurance policy coverages are compared for determining whether coverage in a policy offered by an organization is not generally otherwise commercially available, the comparison is based on the specific characteristics of the recipients of the piece (*e.g.*, geographic location or demographic characteristics).''

The standard further explains that the types of insurance considered generally commercially available include, but are not limited to, homeowner's, property, casualty, marine, professional liability (including malpractice), travel, health, life, airplane, automobile, truck, motorhome, motorbike, motorcycle, boat, accidental death, accidental dismemberment, Medicare supplement (Medigap), catastrophic care, nursing home, and hospital indemnity insurance.

Several years after these standards were issued, the Postal Service was challenged in the United States District Court for the District of Columbia by two organizations authorized to mail qualifying matter at nonprofit rates. Each organization offered insurance to its respective members. In each case, the Postal Service had determined that the organization's mailings promoting insurance were not eligible for nonprofit rates. The organizations asked the District Court to reverse those decisions.

One of the nonprofit organizations was a fraternal benefit organization that offered life, medical, disability, and

long-term care insurance to its members. The policies were underwritten by the organization itself. The other nonprofit organization gave charitable grants for legal research funded through tax-deductible donations of dividends that otherwise would be payable to its members, donors, supporters, or beneficiaries who are insured through group insurance policies that the organization offers. In that case, the policies were underwritten by major insurance carriers.

The District Court held that the Postal Service's regulations constituted an incorrect reading of 39 U.S.C. 3626(j)(1)(B). The Postal Service appealed the District Court's decisions to the United States Court of Appeals for the District of Columbia Circuit, which consolidated the appeals and affirmed the District Court's decisions.

In light of the courts' rulings, the Postal Service proposes to amend DMM E670.5.5 to allow, under certain circumstances, the mailing of promotional material offering general types of insurance, such as homeowner's, property, casualty, marine, professional liability, and so forth. In doing so, the Postal Service is taking into account the courts' rulings, the Postal Service Appropriations Act of 1991, and the related legislative history. As explained in previous rulemakings concerning this statute, the Postal Service's obligation in establishing regulations is to adhere to the intent of Congress.

Under the proposal, mailings permitted at nonprofit rates in effect since 1991 continue to be eligible for the nonprofit rates. In addition, the Postal Service finds that Public Law No. 101–509 does not restrict the use of the nonprofit rates for mailings of an authorized fraternal benefit society or any other nonprofit organization when the material advertises, promotes, or offers insurance that is underwritten by the nonprofit organization itself.

The Postal Service also finds that Public Law No. 101–509 does not restrict the use of the nonprofit rates for mailings of an authorized organization's material that advertises, promotes, or offers insurance, if the coverage is provided or promoted by the nonprofit organization to its members, donors, supporters, or beneficiaries in such a way that those parties may make tax-deductible donations to the organization of their proportional shares of income in excess of costs that the nonprofit organization receives from the purchase of the coverage by its members, donors, supporters, or beneficiaries.

The position of the Postal Service regarding the second type of insurance is similar to view of the Postal Service on charitable gift annuities (CGAs), which in many ways are similar to commercial annuities sold by life insurance companies. In a 1997 administrative ruling (Customer Support Ruling PS–294, Charitable Gift Annuities—Nonprofit Standard Mail, November 1997), the Postal Service found that CGAs are not generally otherwise commercially available because they differ from commercial insurance in a number of regulatory contexts—including that the federal tax code expressly provides that CGAs are not commercial-type insurance. Therefore, the Postal Service concluded that material regarding CGAs could be entered at the nonprofit rates.

Organizations continue to bear the burden of proof, as they have done historically, in substantiating that their mailings qualify for the nonprofit rates of postage. For example, upon request, they must provide evidence to support any claim that the coverage provided by a particular policy is not generally otherwise commercially available within the meaning of revised DMM E670.5.5.

Additionally, the Postal Service has historically viewed, and continues to view, provisions regarding the mailing of promotional materials concerning insurance as supplementary to, rather than a change to or replacement for, the existing standards that restrict cooperative mailings. Mailings that are ineligible under the cooperative mailing provisions remain ineligible for the nonprofit rates, regardless of whether or not they violate the newly adopted standards related to insurance.

Although exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), (c), regarding proposed rulemaking by 39 U.S.C 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual (DMM) as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E670 Nonprofit Standard Mail

* * * * *

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.5 Definitions, Insurance

[Revise 5.5 to read as follows:]

For the standard in 5.4b:

a. Except as specified in 5.5c, the phrase not generally otherwise commercially available applies to the actual coverage stated in an insurance policy, without regard to the amount of the premiums, the underwriting practices, and the financial condition of the insurer. When comparisons are made with other policies, consideration is given to coverage benefits, limitations, and exclusions, and to the availability of coverage to the targeted recipients. When insurance policy coverages are compared to determine whether coverage in a policy offered by an organization is not generally otherwise commercially available, the comparison is based on the specific characteristics of the mailpiece recipients (*e.g.*, geographic location or demographics).

b. Except as specified in 5.5c, the types of insurance considered generally commercially otherwise available include, but are not limited to, homeowner's, property, casualty, marine, professional liability (including malpractice), travel, health, life, airplane, automobile, truck, motorhome, motorbike, motorcycle, boat, accidental death, accidental dismemberment, Medicare supplement (Medigap), catastrophic care, nursing home, and hospital indemnity insurance.

c. Coverage is considered not generally otherwise commercially available if either of the following conditions applies:

(1) The coverage is provided by the nonprofit organization itself (*i.e.*, the nonprofit organization is the insurer).

(2) The coverage is provided or promoted by the nonprofit organization in a mailing to its members, donors, supporters, or beneficiaries in such a way that the members, donors, supporters, or beneficiaries may make tax-deductible donations to the nonprofit organization of their proportional shares of any income in excess of costs that the nonprofit organization receives from the purchase

of the coverage by its members, donors, supporters, or beneficiaries.

* * * * *

An appropriate amendment to 39 CFR part 111 will be published if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–13347 Filed 6–14–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7773–3]

Clean Air Act Operating Permit Program; Petition for Objection to Proposed State Operating Permit for Shintech, Inc. and Its Affiliates Polyvinyl Chloride (PVC) Plant, Addis, West Baton Rouge Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to State operating permit.

SUMMARY: This notice announces that the EPA Administrator has denied a petition to object to a State operating permit issued by the Louisiana Department of Environmental Quality for Shintech, Inc. and its Affiliates (Shintech) PVC plant in Addis, West Baton Rouge Parish, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the Petitioners may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under Section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at EPA, Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://kodiak.r07.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/shintech_decision1999.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett, Air Permits Section, Multimedia Planning and Permitting Division, EPA, Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, telephone (214) 665–7227, or e-mail at *barrett.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On August 31, 1999, Ms. Marylee Orr, on behalf of the Alliance Against Waste and Action to Restore the Environment and the Louisiana Environmental Action Network (petitioner), petitioned EPA to object to the issuance of a permit to Shintech Inc. and its Affiliates (Shintech). The petition raised six objections to the Shintech permit: (1) The permit will inhibit reasonable further progress in the Baton Rouge ozone nonattainment area, and as such, is not in accordance with the Act; (2) the most recent State Implementation Plan dated January 2, 1997, fails to meet the requirements of section 182(c)(2)(A) of the Act in that it fails to provide for attainment of the ozone standard by the applicable attainment date; (3) although the proposed plant is considered a minor source, it will become a major source when the area is reclassified to severe,[1] and thus should be required to meet the prevention of significant deterioration and reasonably available control technology requirements now because it is easier to apply these requirements prior to construction than after operation begins; (4) certain emission calculations in the permit application are incorrect; (5) the proposed permit does not meet the appropriate maximum achievable control technology standards; and (6) EPA Region 6 management failures.

On July 3, 2003, the Administrator issued an order denying the petition. The order explains the reasons for the Administrator's decision.

Dated: May 28, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–13408 Filed 6–14–04; 8:45 am]

BILLING CODE 6560–50–P

[1] The Baton Rouge nonattainment area was recently reclassified as a severe nonattainment area for ozone. 68 FR 20077 (April 24, 2003).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–7657–5]

Underground Storage Tank Program: Approved State Program for West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to codify the previously authorized underground storage tank (UST) program of the State of West Virginia. This codification reflects the State's program in effect at the time EPA granted West Virginia approval (September 23, 1997). In the ''Rules and Regulations'' section of this **Federal Register,** EPA is codifying the program by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this codification in the preamble to the immediate final rule. Unless we get written comments which oppose this codification during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by July 15, 2004.

ADDRESSES: Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–3377. Comments may also be submitted electronically through the Internet to: *nino.rose@epa.gov* or by facsimile at (215) 814–3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone (215) 814–3377.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register.**

Dated: March 25, 2004.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 04–13282 Filed 6–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–7658–2]

Underground Storage Tank Program: Approved State Program for Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to codify the previously authorized underground storage tank (UST) program of the Commonwealth of Virginia. This codification reflects the Commonwealth's program in effect at the time EPA granted Virginia approval (September 28, 1998). In the ''Rules and Regulations'' section of this **Federal Register**, EPA is codifying the program by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this codification in the preamble to the immediate final rule. Unless we get written comments which oppose this codification during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by July 15, 2004.

ADDRESSES: Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–3377. Comments may also be submitted electronically through the Internet to: *nino.rose@epa.gov* or by facsimile at (215) 814–3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone (215) 814–3377.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: March 25, 2004.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 04–13284 Filed 6–14–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 69, No. 114

Tuesday, June 15, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # FV–04–308]

United States Standards for Grades of Sweet Peppers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revision to the United States Standards for Grades of Sweet Peppers. The Fruit and Vegetable Industry Advisory Committee has asked AMS to review all fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has noted that tolerances need to be separated for decay affecting walls and/or calyxes from decay affecting stems only. Other areas for possible revision include adopting and defining industry terms for size and color. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by August 16, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov* or you may also send your comments by the electronic process available at the Federal eRulemaking portal at *http://www.regulations.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: In a 2003 meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Sweet Peppers for possible revision. These standards were last revised in 1989. The current standards for all grades of sweet peppers allow a two percent tolerance for decay affecting stems, walls and calyxes. All decay seriously detracts from the appearance or the edible or shipping quality of the pepper. However, decay affecting the stems only does not affect the edible portion of the pepper. Therefore, AMS is considering a change in the scoring and reporting of decay. Decay affecting walls and calyxes shall continue to be scored against the restrictive tolerance of two percent for decay. Decay affecting the stems only shall be scored against the serious damage tolerance of five percent for U.S. Fancy and U.S. No. 1 grades, and against the total lot tolerance of ten percent for serious damage in the U.S. No. 2 grade. AMS believes that a change to the decay tolerance is warranted to better serve the industry. Other areas under review are industry terms for size based on 1⅑ bushel containers as well as the terms ''chocolate'' and ''suntan'' which the industry uses to describe the color of peppers. Prior to undertaking detailed work to develop the proposed revised standards, AMS is soliciting comments on the possible revision of the standards for grades of sweet peppers and the probable impact on distributors, processors, and growers.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS proceed with revising the standards, the proposed revision of the standards will be published in the **Federal Register** with a request for comments.

Dated: June 7, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–13360 Filed 6–14–04; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; West Copper River Delta Sport Fish Use Survey

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the proposed new information collection, West Copper River Delta Sport Fish Use Survey. The collection is necessary to provide baseline data on the amount and distribution of sport fish use (recreational anglers) on National Forest System lands of the Copper River Delta. The information provided by this survey will assist in managing recreational fishing resources on the Copper River Delta.

DATES: Comments must be received in writing on or before August 16, 2004. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Deyna Kuntzsch, Fisheries Biologist, or Dirk Lang, Fisheries Biologist, Cordova Ranger District, Chugach National Forest, Forest Service, USDA, PO Box 280, Cordova, AK 99574.

Comments also may be submitted via facsimile to (907) 424–7214 or by e-mail to *dkuntzsch@fs.fed.us* or *dwlang@fs.fed.us.*

The public may inspect comments received at 612 North 2nd Street, Cordova, Alaska. Visitors are encouraged to call ahead to (907) 424–7661 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Deyna Kuntzsch, Cordova Ranger District, at (907) 424–4737, or Dirk Lang, Cordova Ranger District, at (907) 424–4753. Individuals, who use telecommunication devices for the deaf (TDD), may call the Federal Relay Service (FRS) at 1–800–877–8339

twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: West Copper River Delta Sport Fish Use Survey.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: The amount and distribution of sport fish use (recreational angling) on individual streams of the West Copper River Delta is currently unknown. Local managers have observed a recent increase in use and are concerned that concentrated use will impact fisheries resources. Concentrated sport fish use can result in habitat degradation, over harvest of small coho salmon stocks, increased trash/noise/pollution, congested fishing at popular spots, and increased traffic/parking problems at access points. There are two main sport fish user groups: local and non-local. Much of the use may come from non-local anglers that arrive by one of two means: airplane or ferry. Improved ferry service in 2005 may further increase the number of sport fish users on the Copper River Delta. There is a need to collect baseline data on the current amount and distribution of sport fish use on the Copper River Delta.

The Cordova Ranger District proposes to collect the information in three ways: person-to-person interviews at the airport and at ferry terminals, mail-in questionnaires distributed to local residents, and aerial counts of anglers. Respondents will be asked where they fished, how long they fished, what species they caught, and what species they harvested. The information from the interviews and from the mail-in questionnaires will be assessed against the aerial surveys.

The collected information will provide Forest Service resource managers with a means by which to measure and monitor sport fish use on the West Copper River Delta during the peak fishing period and to assist in the management of sport fish use at the individual stream level on the Copper River Delta. The data will be useful to: (1) Focus sport fish related interpretive and educational projects (signs and brochures); (2) focus habitat protection and restoration projects in areas of concentrated use; (3) focus habitat monitoring efforts in areas of concentrated use; (4) identify areas where improved access and or facilities would benefit users or other forest resources (trails, parking areas, fish cleaning stations, etc.); and (5) evaluate special use permit (SUP) needs.

Estimate of Annual Burden: 10 minutes.

Type of Respondents: Individuals who sport fish on the West Copper River Delta.

Estimated Annual Number of Respondents: 3,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget approval.

Dated: May 27, 2004.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 04–13465 Filed 6–14–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Commercial Pack Stock Use Authorizations for the Ansel Adams and John Muir Wildernesses; Inyo and Sierra National Forests; Inyo, Fresno, Madera and Mono Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement for a proposal to authorize outfitting and guiding activities by up to 22 commercial pack stock operations that serve the John Muir and Ansel Adams Wilderness areas. The proposed action establishes limits on the numbers of stock animals used in conjunction with commercial operators, establishes limits on the commercial group size at certain locations, determines trail suitability for commercial operations, and designates campsites for use by commercial stock users. The proposed action also establishes primary operating areas for commercial pack stock operations, establishes destination quotas, and determines grazing suitability.

DATES: Comments concerning the scope of the analysis should be received no later than July 26, 2004. A draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review in January 2005. At that time the EPA will publish a Notice of Availability in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability. The final EIS is scheduled to be completed in May 2005.

ADDRESSES: Send written comments to: Pack Stock Use Proposed Action, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514. Electronic comments may be sent to *comments-pacificsouthwest-inyo@fs.fed.us*. The subject line should read ''Pack Stock Use Proposed Action.''

FOR FURTHER INFORMATION CONTACT: Mary Beth Hennessy, Wilderness Specialist, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514, (760) 873–2448.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

On April 10, 2000, a lawsuit was filed against the Sierra and Inyo National Forests alleging violations of the National Forest Management Act, National Environmental Policy Act (NEPA), and the Wilderness Act. Specifically, it was claimed that commercial pack stations were issued special use permits to operate in the Ansel Adams and John Muir Wilderness areas without assessing, in advance through the NEPA process, the environmental impacts of these activities. On June 4, 2001, the judge overseeing the lawsuit issued a ruling on the litigation and found in favor of the plaintiffs, although only on the NEPA claim. The Court determined that the Forest Service failed to adequately document environmental impacts as required by the NEPA. On November 1, 2001, a Court Order was issued that required the Forest Service to complete the NEPA process for these permits no later than 2006. The Court specifically required that a cumulative impacts analysis be included in the NEPA

process and that this analysis consider limits on numbers of stock animals used in conjunction with commercial operators, limits on the group size (people and number of stock both on and off trail), trail suitability for various use types, and designation of campsites for use by commercial pack stations.

The purpose of this proposed action is to: (1) Identify where, at what level and what type of use each commercial pack stock operator will be authorized to provide; (2) ensure that the commercial pack stock operations comply with applicable law, the Land and Resource Management Plans for the Inyo and Sierra National Forests, and with Forest Service policy; (3) provide for resource protection, including protection of wilderness character, while meeting the identified need for commercial pack stock services by the public; and (4) comply with the Court Order.

The Forest Service needs to make a decision on the specific terms and conditions that will be incorporated into the authorizations for commercial pack stock operations in these two wilderness areas. Most of the special use permits issued to existing commercial pack stock operations have expired or are due to expire in the next few years. Operations continue to be authorized pursuant to the Court Order, with specified conditions and restrictions, until a new NEPA analysis is completed and new special use permits are issued.

Proposed Action

To meet the purpose and need, the Forest Service proposes to authorize use and occupancy for outfitting and guiding activities for up to 22 commercial pack stock operators that provide these services in the Ansel Adams and John Muir Wildernesses. This proposed action will impose terms, conditions, and appropriate use levels for these activities to be incorporated into the special use permit. Specifically, the proposed action includes the following: (1) Designation of stock camps for commercial operators; (2) approval or disapproval of use of non-system trails by commercial stock operators; (3) determination of grazing suitability and allocations of stock nights for specific grazing areas; (4) determination of appropriate party size by location; (5) approval, maintenance, or the elimination of pack stock holding facilities (*e.g.*, drift fences); (6) identification of certain system trails as ''not recommended for stock'' which will preclude their use by commercial pack stock operators; (7) determination of appropriate camp fire areas; and (8) protection of heritage resources and traditional Native American cultural resources. The proposed action includes actions that will be common to all analysis units in the John Muir and Ansel Adams Wildernesses and actions that are site-specific to areas within the analysis units.

Possible Alternatives

In addition to the Proposed Action, a No Action alternative, as required by the NEPA, will be analyzed. The No Action alternative to be analyzed would allow for the expiration of current commercial pack stock authorizations for the Ansel Adams and John Muir Wilderness areas.

Responsible Official

The responsible officials are Jeffrey E. Bailey, Forest Supervisor, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514 and Edward C. Cole, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611.

Nature of Decision To Be Made

The decision to be made is whether to authorize outfitting and guiding use and activities by commercial pack stock operations in the John Muir and Ansel Adams Wilderness areas as proposed or as modified in response to the analysis of identified issues and alternatives. This decision is intended to meet the court ordered cumulative effects analysis for these two wilderness areas. This decision may require an amendment to the two forest land and resource management plans.

Scoping Process

The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, tribes, individuals and other organizations that may be interested in or affected by the proposed action. Comments submitted during the scoping process should be in writing. They should be specific to the action being proposed and should describe as clearly and completely as possible any issues the commenter has with the proposal. This input will be used in preparation of the draft EIS.

To facilitate public participation, additional scoping opportunities will include a public scoping letter, public meetings (dates and locations to be determined), newsletters, and information posted on the Inyo and Sierra National Forests' Web sites.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service would like to know of any issues, concerns and suggestions you may have about this proposal. The complete proposed action is highly detailed and site specific. Copies of the complete document may be obtained upon request by contacting MaryBeth Hennessy (see **FOR FURTHER INFORMATION,** above).

Early Notice of Importance of Public Participation in Subsequent Environmental Review: 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 draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement 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 comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement 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 draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: June 7, 2004.

Edward C. Cole,

Forest Supervisor, Sierra National Forest.

Dated: June 7, 2004.

Jeffrey E. Bailey,

Forest Supervisor, Inyo National Forest.

[FR Doc. 04–13394 Filed 6–14–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2004 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on June 22, 2004, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: June 7, 2004.

David T. Bull,

Forest Supervisor.

[FR Doc. 04–13393 Filed 6–14–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Announcement of Value-Added Producer Grant Application Deadlines and Funding Levels

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of $13.2 million in competitive grant funds for fiscal year (FY) 2004 to help independent agricultural producers enter into value-added activities. RBS hereby requests proposals from eligible independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures interested in a competitively-awarded grant to fund one of the following two activities: (1) Planning activities needed to establish a viable value-added marketing opportunity for an agricultural product (*e.g.* conduct a feasibility study, develop a business plan, develop a marketing plan); or (2) acquire working capital to operate a value-added business venture that will allow producers to better compete in domestic and international markets. In order to provide program benefits to as many eligible applicants as possible, applications can only be for one or the other of these two activities, but not both. The maximum award per grant is $500,000 and matching funds are required.

DATES: You may submit completed applications for grants on paper or electronically by 4 p.m. Eastern time on July 30, 2004.

ADDRESSES: You may obtain application guides and materials for a Value-Added Producer Grant via the Internet at the following web address: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or by contacting the Agency Contact for your state listed in Section VII of this notice.

Submit completed paper applications for a grant to DynAccSys, Attention: Bitsy Keko, 101 Donner Drive, Oak Ridge, TN 37830.

Submit electronic grant applications to the following e-mail address: *VAPG@duncanltd.com.*

FOR FURTHER INFORMATION CONTACT: The Agency Contact for your state listed in Section VII of this notice.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Value-Added Producer Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.352.

Dates:

- *Application Deadline:* Applications must be received on or before 4 p.m. Eastern time on July 30, 2004.

I. Funding Opportunity Description

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizing the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants (VAPG). The Secretary of Agriculture has delegated the program's administration to USDA's Rural Business-Cooperative Service.

The primary objective of this grant program is to help eligible independent producers of agricultural commodities, agricultural producer groups, farmer and rancher cooperatives, and majority-controlled producer-based business ventures develop strategies to create marketing opportunities and to help develop business plans for viable marketing opportunities. Eligible agricultural producer groups, farmer and rancher cooperatives, and majority-controlled producer-based business ventures must limit their proposals to emerging markets. These grants will facilitate greater participation in emerging markets and new markets for value-added products. Grants will only be awarded if projects or ventures are determined to be economically viable and sustainable. No more than 10 percent of program funds can go to applicants that are majority-controlled producer-based business ventures.

Definitions

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Producer—Persons or entities, including farmers, ranchers, loggers, agricultural harvesters and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which Value-Added is to accrue as a result of the project. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the

corn produced that is then converted into corn meal.

Agriculture Producer Group—An organization that represents Independent Producers, whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and other seafood products.

Applicant—An entity or individual applying for a VAPG that has a unique Employer Identification Number (EIN).

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, increased value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Emerging Market—A new or developing market for the applicant, which the applicant has not traditionally supplied.

Farm—Any place from which $1,000 or more of agricultural products (crops and livestock) were sold or normally would have been sold during the year under consideration.

Farmer or Rancher Cooperative—A farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, individuals or entities (including for profit and not for profit corporations, LLCs, partnerships or LLPs), where the entities are solely owned or controlled by Agricultural Producers who own a majority ownership interest in the agricultural product that is produced. An independent producer can also be a steering committee composed of independent producers in the process of organizing an association to operate a Value-Added venture that will be owned and controlled by the independent producers supplying the agricultural product to the market. Independent Producers must produce and own the agricultural product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers.

Majority-Controlled Producer-Based Business Venture—A venture where more than 50% of the ownership and control is held by Independent Producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Matching funds must be at least equal to the grant amount. In-kind contributions that conform to the provisions of 7 CFR 3015.50 and 7 CFR 3019.23, as applicable, can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than an equal amount of matching funds shall have been funded prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds. Funds used for an ineligible purpose will not be considered matching funds.

National Office—USDA RBS headquarters in Washington, DC.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, where no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Planning Grants—Grants to facilitate the development of a defined program of economic activities to determine the viability of a potential Value-Added venture, including feasibility studies, marketing strategies, business plans and legal evaluations.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

Rural and rural area—includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in most states.

Small Farm—A farm that has an average annual gross sales of $250,000 or less over the last three fiscal years.

Total Project Cost—The sum of the amount of requested VAPG funds and the proposed matching funds.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of:

(1) A change in its physical state,

(2) Differentiated production or marketing, as demonstrated in a business plan, or

(3) Product segregation. Also,

(4) The economic benefit realized from the production of farm or ranch-based renewable energy.

Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that

identifies how the product was produced and by whom.

Working Capital Grants—Grants to provide funds to operate ventures and pay the normal expenses of the venture that are eligible uses of grant funds.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $13.2 million.

Approximate Number of Awards: 78.

Approximate Average Award: $170,000.

Floor of Award Range: None.

Ceiling of Award Range: $500,000.

Anticipated Award Date: 1 October 2004.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Applicants must be an independent producer, agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as defined in the ''Definitions'' section of this notice. If the applicant is an unincorporated group (steering committee), it must form a legal entity before the grant period can begin.

2. *Cost Sharing or Matching:* Matching funds are required. Applicants must verify in their applications that matching funds are available for the time period of the grant. Matching funds must be at least equal to the amount of grant funds requested. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources if they are in-kind contributions.

3. *Other Eligibility Requirements:*

- *Product Eligibility:* The project proposed must involve a Value-Added product as defined in the ''Definitions'' section of this notice. Applicants should note that a project falling under the second definition of Value-Added must already have a business plan in place at the time of application. The applicant must reference this business plan in the application. Because of this requirement, it is unlikely that projects falling under the second definition of Value-Added will be eligible to apply for a planning grant. In order to be eligible under the farm or ranch-based renewable energy category, the project must include energy generated on-farm through the use of agricultural commodities, wind power, or solar power.
- *Activity Eligibility:* The project proposed must specify whether grant funds are requested for planning activities or for working capital. Applicants may not request funds for both types of activities in one application. Applications requesting funds for both planning activities and for working capital will not be considered for funding. Applicants other than independent producers applying for a working capital grant must demonstrate that the venture is in its first or second year of operation at the time of application.
- *Grant Period Eligibility:* Applications that have a timeframe of more than 365 days will be considered ineligible and will not be considered for funding. Applications that request funds for a time period beginning more than 90 days after the anticipated award date will not be considered for funding.
- Applications without sufficient information to determine eligibility will not be considered for funding.
- Applications that are non-responsive to the submission requirements detailed in Section IV of this notice will not be considered for funding.
- Applications that are missing any required elements (in whole or in part) will not be considered for funding.
- Applicants may submit more than one application, but in the event that more than one application for any applicant scores high enough to be funded, only the highest ranking application will be funded.
- Applicants who have already received a planning grant for the proposed project shall not receive another planning grant for the same project. Applicants who have already received a working capital grant for a project shall not receive any additional grants for that project. Applicants may receive a planning grant for a project in one funding cycle and receive a working capital grant for the same project in a subsequent funding cycle.
- Applicants may also receive one grant in any given funding year and be eligible to receive another grant in a subsequent funding year, subject to the above restrictions.
- If an applicant currently has a VAPG, the grant period for that grant must be scheduled to expire within 90 days of the expected award announcement date.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain the application package for this funding opportunity at the following internet address: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the representative listed for your state from the list in the ''Agency Contacts'' section. Application forms can be mailed to you.

2. *Content and Form of Submission:* You may submit your application in paper or in an electronic format. If you submit your application in paper form, you must submit a signed original and one copy of your complete application. The application must be in the following format:

- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch on the top, bottom, left, and right.
- Printed on only one side of each page.
- Held together only by rubber bands or metal or plastic clips; not bound in any other way.
- Language: English, avoid jargon.
- The submission must include all pages of the application.
- It is recommended that the application is in black and white, and not color. All paper applications will be scanned electronically for further review upon receipt by the Agency and the scanned images will all be in black and white. Those evaluating the application will only receive black and white images.

If you submit your application electronically, you only need to submit one copy. The application must be in the following format:

- File format: pdf format, using Adobe Acrobat version 5.0 or higher.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch on the top, bottom, left, and right.
- Language: English, avoid jargon.
- The submission must contain all application pages (including the signed forms) in one file.
- It is recommended that the application is in black and white, and not color. Those evaluating the application will only receive black and white images.

Multiple submissions or electronic files for the same application will be accepted at the discretion of the Agency. All applicants will receive a notice, either electronically or by mail that their application has been received. This

notice will only indicate that the application has been received; it does not convey any determination on the part of the Agency that the application is eligible or has been evaluated. Applicants will not be notified of their eligibility or ranking until all applications have been completely evaluated and the Agency has announced the award determinations.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. Form SF–424, ''Application for Federal Assistance.'' In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's DUNS number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number, the start and end dates of the project, the federal funds requested, other funds that will be used as matching funds, an answer to the question, ''Is applicant delinquent on any federal debt?'', the name and signature of an authorized representative (if the signature is of anyone other than a stated owner of the proposed venture, the application should include a signed statement by either the owner(s) of the entity or the governing board stating that the signature is made by an authorized person), the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete. Failure to submit any of the above information by the application deadline will result in a determination of incomplete and the application will not be considered for funding.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant from RBS. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call (866) 705–5711. For more information, see the VAPG website at: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or contact the program representative in your state from the list in Section IV.1.

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both federal and matching funds. Applications lacking information in any of the above-listed sections or applications failing to include both federal and matching funds by the application deadline will be determined to be incomplete and will not be considered for funding.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' In order for this form to be considered complete, the form must be signed by an authorized official (if the signature is of anyone other than a stated owner of the proposed venture, the application should include a signed statement by either the owner(s) of the entity or the governing body stating that the signature is made by an authorized person) and include the title, name of applicant, and date submitted. Applications lacking the above-listed information by the application deadline will be determined to be incomplete and will not be considered for funding.

4. Survey on Ensuring Equal Opportunity for Applicants. This form must be submitted by all non-profit applicants. Completion of the form is voluntary, but those applicants choosing not to complete the form should submit a blank form with a statement that they choose not to complete the form.

5. Title Page. The Title Page should include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

6. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents (TOC) immediately following the required SF–424 forms. The TOC should include page numbers for each component of the proposal. Pagination should begin immediately following the TOC. In order for this element to be considered complete, the TOC should include page numbers for the Proposal Summary, an Eligibility Discussion, the Proposal Narrative and its subcomponents (Project Title, Information Sheet, Goals of the Project, Work Plan, Performance Evaluation Criteria and Proposal Evaluation Criteria), Verification of Matching Funds and Certification of Matching Funds. Failure to include a listing for any of these elements by the application deadline will result in a determination of incomplete and the application will not be considered for funding.

7. Executive Summary. A summary of the proposal, not to exceed one page, should briefly describe the project, including goals, tasks to be completed and other relevant information that provides a general overview of the project. In this section the applicant must clearly state whether the proposal is for a planning grant or a working capital grant and the amount requested. Failure to include any of the requested information by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

8. Eligibility Discussion. A detailed discussion, not to exceed four (4) pages, describing how the applicant, project, and purpose meet the eligibility requirements. In the event that more than four (4) pages are submitted, only the first four (4) pages will be considered.

The applicant must first describe how it meets the definition of an independent producer, agricultural producer group, farmer or rancher cooperative, or a majority-controlled producer-based business venture as defined in the ''Definitions'' section of this funding announcement. The applicant must apply as only one type of applicant.

If the applicant is an independent producer, the proposal must demonstrate that the owners of the business applying own and produce more than 50 percent of the raw commodity that will be used for the value-added product. The applicant must also demonstrate that the product is owned by the producers from its raw commodity state through the production of the value-added product. Failure to demonstrate either or both of these requirements will result in a determination of ineligible and the proposal will not be considered for funding.

If the applicant is an agricultural producer group, it must specifically identify the independent producers on whose behalf the work will be done. These producers must own and produce the commodity to which value will be added. Failure to identify by name these independent producers will result in a determination of ineligible and the proposal will not be considered for funding.

If the applicant is a farmer or rancher cooperative, the applicant must reference the business' standing as a cooperative in its state of incorporation. The applicant must also explain how the cooperative is 100 percent owned and controlled by producers who produce the commodity to which value will be added. Failure to demonstrate standing as a cooperative and/or 100 percent producer ownership and control by the application deadline will result

in the determination of ineligible and the proposal will not be considered for funding.

If the applicant is a majority-controlled producer-based business venture, the proposal must state the percentage of the venture owned by independent producers, or partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers (eligible producers). The percentage must be calculated by dividing the ownership interest of the eligible producers by the ownership interest of all owners. These eligible producers must own and produce the commodity to which value will be added. The applicant must also demonstrate that eligible producers have majority control over the business. Majority control must be demonstrated through voting rights on the governing body of the business venture. The majority of voting rights must belong to eligible producers who own and produce the commodity to which value will be added. Failure to demonstrate both majority-ownership and majority-control by eligible producers by the application deadline will result in the determination of ineligible and the proposal will not be considered for funding.

In addition, the applicant must describe all organizations that are involved in the project.

The applicant must next describe how the value-added product to be produced meets the definition of ''Value-Added Product'' as defined in the ''Definitions'' section of this funding announcement.

If the product meets the first definition, the application must explain the change in physical state or form of the product.

If the product meets the second definition, the proposal must explain how the production or marketing of the commodity enhances the value-added product's value. The enhancement of value should be quantified by using a comparison with value-added products produced or marketed in the standard manner. Also, a business plan that has been developed for the applicant for the project must be referenced. Failure to demonstrate that a business plan has been developed and/or failure to quantify the enhancement of value by the application deadline will result in the determination of ineligible and the proposal will not be considered for funding.

If the product meets the third definition, the proposal must explain how the physical segregation of a commodity or product enhances its value. The enhancement of value should be quantified, if possible, by using a comparison with commodities marketed without segregation.

If the product meets the fourth definition, the proposal must explain how the renewable energy will be generated and used on a farm or ranch. If the proposal fails to demonstrate these requirements by the application deadline, it will be determined to be incomplete and the proposal will not be considered for funding.

Finally, the applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the project activities must be planning activities or working capital activities, but not both. Second, the activities must be directly related to the processing and/or marketing of a value-added product. Agricultural production activities are not eligible for funding.

If the grant request is for planning activities, working capital expenses are not eligible for funding. If more than 20 percent of the total project cost (both grant and matching funds) for a planning activities application is for working capital expenses, the entire application will be determined to be ineligible and will not be considered for funding. If 20 percent or less of the total project cost for a planning activities application is for working capital expenses, the application may still be considered for funding, but any subsequent award will only be for eligible project expenses.

If the grant request is for working capital, planning activities are not eligible for funding. If more than 20 percent of the total project cost (both grant and matching funds) for a working capital application is for planning activities, the entire application will be determined to be ineligible and will not be considered for funding. If 20 percent or less of the total project cost for a working capital application is for planning activities, the application may still be considered for funding, but any subsequent award will only be for eligible project expenses.

If the applicant has already received a planning grant for a project, it is only eligible to apply for a working capital grant. If an applicant has already received a working capital grant for a project, it is not eligible to apply for any further grants for that project.

An applicant may not receive more than one grant in any one funding cycle. An applicant may submit multiple applications, but if more than one application scores high enough to be funded, only the highest ranked application will be funded.

9. Proposal Narrative. The narrative, not to exceed 35 pages (Times New Roman, 12 point font, 1 inch margins) must include the following information. In the event that more than 35 pages are submitted, only the first 35 pages submitted will be considered.

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. Failure to submit a project title by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

ii. Information Sheet. A separate one page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion. Failure to submit an information sheet referencing all evaluation criteria by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

iii. Goals of the Project. A clear statement of the ultimate goals of the project. There must be an explanation of how a market will be expanded and the degree to which incremental revenue will accrue to the benefit of the agricultural producer(s). Failure to submit a statement of the goals of the project by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

iv. Work Plan. The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what time frame the activity will take place, and the cost of the activity. Failure to submit a work plan by the application deadline will result in a determination of incomplete, and the proposal will not be considered for funding.

v. Working capital applications must also include three (3) years of pro forma financial statements, including an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. The financial statements will not count as part of the 35 page limit for the narrative

section of the proposal. Applications that are missing any of the required financial statements and/or the assumptions by the application deadline will be determined to be incomplete and will not be considered for funding.

vi. Performance Evaluation Criteria. The applicant must suggest criteria by which the project should be evaluated in the event that a grant is awarded. These suggested criteria are not binding on USDA. Failure to submit at least one performance criterion by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

vii. Proposal Evaluation Criteria. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form. Failure to address all evaluation criteria by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding. Failure to address the appropriate evaluation criteria (planning grant proposals must address planning grant evaluation criteria and working capital grant proposals must address working capital grant evaluation criteria) by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

10. Verification of Matching Funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If matching funds are to be provided by the applicant in cash, a copy of a bank statement with an ending date within 30 days of the application deadline is required. The bank statement must show an ending balance equal to or greater than the amount of cash matching funds proposed. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If matching funds are inappropriately verified by the application deadline, the application will be considered to be incomplete, and the application will not be considered for funding. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification for funds donated outside the proposed time period of the grant will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification for in-kind contributions donated outside the proposed time period of the grant will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this grant program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this grant program. The matching funds must be spent or donated during the grant period and the funds must be expended at a rate equal to or greater than the rate grant funds are expended. Some examples of acceptable uses for matching funds are: skilled labor performing work required for the proposed project, office supplies, and purchasing inventory. Some examples of unacceptable uses of matching funds are: land, fixed equipment, buildings, and vehicles.

Expected program income may not be used to fulfill the matching funds requirement at the time of application. If program income is earned during the time period of the grant, it may be used to replace other sources of matching funds if prior approval is received from the Agency. Any program income earned during the grant period is subject to the requirements of 7 CFR 3019.24.

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will be determined to be incomplete and will not be considered for funding.

11. Certification of Matching Funds. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement. If this certification is missing from the application by the application deadline, the application will be determined to be incomplete and will not be considered for funding.

3. *Submission Dates and Times:*

Application Deadline Date: July 30, 2004.

Explanation of Deadlines: Applications must be received by 4 p.m. Eastern Time on the deadline date (see section IV.6. for the address). If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If your application does not meet the deadline above, it will not be considered for funding. You will be notified that your application did not meet the submission deadline. You will also be notified by mail or by e-mail if your application is received on time. If you e-mail your application, you may call the following number for technical assistance: (800) 991–4911.

4. *Intergovernmental Review of Applications:* Executive Order 12372 does apply to this program.

5. *Funding Restrictions:* Funding restrictions apply to both grant funds and matching funds. They include, but are not limited to, the following:

- Funds may only be used for planning activities or working capital for projects focusing on marketing a value-added product. Examples of acceptable planning activities include to:

1. Obtain legal advice and assistance related to the proposed venture;

2. Conduct a feasibility analysis of a proposed value-added venture to help determine the potential marketing success of the venture;

3. Develop a business plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed venture; and

4. Develop a marketing plan for the proposed value-added product, including the identification of a market window, the identification of potential

buyers, a description of the distribution system, and possible promotional campaigns.

• Examples of acceptable working capital uses include to:

1. Design or purchase an accounting system for the proposed venture;

2. Pay for salaries, utilities, and rental of office space;

3. Purchase inventory, office equipment (*e.g.* computers, printers, copiers, scanners), and office supplies (*e.g.* paper, pens, file folders); and

4. Conduct a marketing campaign for the proposed value-added product.

• No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

2. Purchase, rent, or install fixed equipment, including processing equipment;

3. Purchase vehicles, including boats;

4. Pay for the preparation of the grant application;

5. Pay expenses not directly related to the funded venture;

6. Fund political or lobbying activities;

7. Fund any activities prohibited by 7 CFR parts 3015 and 3019;

8. Fund architectural or engineering design work for a specific physical facility;

9. Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility; or

10. Purchase land.

6. *Other Submission Requirements:* You may submit your application by mail or express delivery service to: DynAccSys, Attention: Bitsy Keko, 101 Donner Drive, Oak Ridge, TN 37830. Or you may submit your application by e-mail to: *VAPG@duncanltd.com.* Applications may not be submitted by facsimile or by hand-delivery. Each application submission must contain all required documents in one envelope, if by mail or express delivery service, or all required documents must be in one electronic pdf file if the submission is by e-mail.

V. Application Review Information

1. *Criteria:* All eligible and complete applications will be evaluated based on the following criteria. Failure to address any one of the following criteria (even if you believe the criteria is not applicable) by the application deadline will result in a determination of incomplete and the application will not be considered for funding. Applications for planning grants have different criteria to address than applications for working capital grants. Addressing the incorrect set of criteria will result in a determination of incomplete and the application will not be considered for funding.

Criteria for applications for Planning Grants are:

1. Nature of the proposed venture (0–25 points). Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. The discussion for this criterion must include the agricultural commodity to which value will be added, the process by which value will be added, and a description of the value-added product produced. If the applicant has the information available, the discussion for this criterion should include references to independent, third-party information that the applicant has reviewed, a discussion of similar projects, cost and availability of inputs, the type of market where the value-added product will be marketed (*e.g.* local, regional, national, international) and the potential number of customers, the cost of processing the commodity, how much value will be added to the raw commodity through the production of the value-added product, how the added value will be distributed among the producers, processors, and any other intermediaries, and any additional non-monetary value that could be obtained by end-users of the product. Points will be awarded based on the greatest expansion of markets and increased returns to producers. Applications that do not discuss a specific commodity, process, and value-added product will receive the minimum points allowed. Two teams of technical experts will be appointed to evaluate this criterion: a team of three independent reviewers and the servicing state office (see section V.2 for more details). The independent reviewers will evaluate this criterion from a national and/or regional perspective, and the servicing state office will evaluate this criterion from a state perspective.

2. Qualifications of those doing work (0–10 points). Proposals will be reviewed for whether the personnel who are responsible for doing proposed tasks, including those hired to do the studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well. If staff or consultants have not been selected at the time of application, the application should include specific descriptions of the qualifications required for the positions to be filled. Also, rather than attaching resumes at the end of the application, it is preferred that the qualifications of the personnel and consultants are discussed directly within the response to this criterion. If resumes are included, they should be contained within the narrative section of the application within the response to this criterion. If resumes are attached at the end of the application, those pages will be counted toward the page limit for the narrative.

3. Project leadership (0–10 points). The leadership abilities of individuals who are proposing the venture will be evaluated as to whether they are sufficient to support a conclusion of likely project success. Credit may be given for leadership evidenced in community or volunteer efforts. Also, rather than attaching resumes at the end of the application, it is preferred that the leadership abilities are discussed directly within the response to this criterion. If resumes are included, they should be contained within the narrative section of the application within the response to this criterion. If resumes are attached at the end of the application, those pages will be counted toward the page limit for the narrative.

4. Commitments and support (0–10 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance. Letters of support should not be included with the application. If they are submitted, they will not be considered for the purpose of evaluating this criterion. Also, letters demonstrating end-user commitments should not be submitted. If they are submitted, they will not be considered for the purpose of evaluating this criterion. The applicant should reference all support groups and commitments in the discussion of this criterion, and have the support letters and commitment letters available upon request. These support and commitment letters are not the same as the documentation required as part of the verification of matching funds requirement. All documentation needed to properly verify matching funds must

be submitted with the application in a separate section.

5. Work plan/Budget (0–10 points). The work plan will be reviewed to determine whether it provides specific and detailed planning task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. Budgets that include more than 10% of total project costs that are ineligible will result in a determination of ineligible and the application will not be considered for funding. However, if an application with ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the grant award will be reduced accordingly. Applications without a work plan and detailed budget submitted by the application deadline will be determined to be incomplete and will not be considered for funding. Logical, realistic, and economically efficient work plans and budgets will result in higher scores.

6. Amount requested (0–5 points). One (1) point will be awarded for grant requests between $450,000 and $350,001, two (2) points will be awarded for grant requests between $350,000 and $250,001, three (3) points will be awarded for grant requests between $250,000 and $150,001, four (4) points will be awarded for grant requests between $150,000 and 50,001, and five (5) points will be awarded for grant requests of $50,000 or less. In addressing this criterion, the applicant should simply state the amount requested.

7. Project cost per owner-producer (0–5 points). This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. The allocation of points for this criterion shall be as follows: $1–$10,000 equals 5 points, $10,001–$25,000 equals 4 points, $25,001–$50,000 equals 3 points, $50,001–$125,000 equals 2 points, $125,001–$250,000 equals 1 point, and $250,001–$500,000 equals 0 points. The applicant must state the number of owner-producers that are part of the venture. For independent producers, farmer- and rancher-cooperatives, and majority-controlled producer-based business ventures, the applicant must state the number of owners of the venture that are independent producers and are also owners of the venture. An owner cannot be considered an independent producer unless he/she is a producer of the agricultural commodity to which value will be added as part of this project. For agricultural producer groups, the number used should be the number of producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a venture, each family member shall count as one owner-producer. The applicant must provide a list of names of the producers who are considered owner-producers for this criterion. This list will not count toward the page limit for this section of the application. Applications without enough information to determine the number of producer-owners or without a list of the producer-owners will be determined to be incomplete and will not be considered for funding. Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

8. Small farm (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Applicants who meet the definition of a small farm are awarded an additional 5 points. Applicants must report a historical average of the last three fiscal years of gross sales. Applicants must be able to verify this number at the time of grant award by showing income tax returns for the farm. Failure to do so shall result in withdrawal of the grant award.

9. Community and industry support (0–10 points). Applicants must submit a description of the local business associations, industry associations, and any political institutions that support their projects. Letters of support should not be submitted, but a description of each letter of support should be included. The description must include the following: the name of the supporting organization, the date of the letter of support, and the name of the person signing the letter. The applicant should also include a brief description of why the support of each group is valuable to the project. State and national Congressional support will not be considered for the purpose of evaluating this criterion. Applicants must be able to present a letter of support for each group listed at the time of award. Failure to demonstrate the support claimed in the application shall result in withdrawal of the grant award. Ventures that only demonstrate one type of support will not score as high for this criterion as ventures that demonstrate multiple types of support.

10. Presidential initiative of bio-energy (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Applicants must indicate whether they believe their project has a bio-energy component. Those applications that have at least 51% of project costs dedicated to planning activities for a bio-energy project will receive five (5) points. Partial credit will not be given. Applicants should note that the energy must be produced primarily (*i.e.* more than 50 percent) for on-farm use, unless the energy produced qualifies as a value-added product in its own right (*e.g.* ethanol, bio-diesel). Also, the energy must be produced from a bio-based source. Examples of qualifying bio-energy projects include ethanol, bio-diesel, and energy produced from a manure digester. On-farm wind energy, on-farm solar energy, and on-farm hydro energy do not qualify for points under this criterion, even though they are eligible projects for this program. Bio-mass projects such as producing compost from manure and producing mulch from trees also do not qualify for points under this criterion, although they are eligible projects for this program.

11. Administrator points (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of the Rural Business-Cooperative Service may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas. If an Applicant wishes to be considered for these points, he/she must submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

Criteria for working capital applications are:

1. Business viability (0–25 points). Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the venture and the efficiency of operations. The discussion for this criterion must include the agricultural commodity to which value will be added, the process by which value will be added, and a description of the value-added product produced. The application should also include

references to independent, third-party information that the applicant has reviewed, a discussion of similar projects, cost and availability of inputs, the type of market where the value-added product will be marketed (*e.g.* local, regional, national, international) and the potential number of customers, the cost of processing the commodity, how much value will be added to the raw commodity through the production of the value-added product, how the added value will be distributed among the producers, processors, and any other intermediaries, and any additional non-monetary value that could be obtained by end-users of the product. The application must also reference the feasibility study and business plan that has been developed for the project. The feasibility study must have been completed by an independent third party. The business plan may have been completed by the applicant, but should have included third party consultation in its development. The applicant should also discuss the financial statements submitted to assist in the demonstration of economic feasibility and sustainability. Points will be awarded based on how well the project is described, the feasibility of the project, the greatest expansion of markets, and increased returns to producers. Applications that do not discuss a specific commodity, process, and value-added product will receive the minimum points allowed. Failure to reference both a third-party feasibility study and a business plan by the application deadline will result in a determination that the application is incomplete and it will not be considered for funding. Applicants are reminded that they must produce the feasibility study and business plan referenced at the time of notification of grant award. Failure to produce both documents will result in withdrawal of the grant award. Also, the feasibility study and business plan are subject to Agency approval. If the feasibility study and business plan do not meet the Agency's approval, the grant award will be withdrawn. Two teams of technical experts will be appointed to evaluate this criterion: a team of three independent reviewers and the servicing state office (see section V.2 for more details). The independent reviewers will evaluate this criterion from a national and/or regional perspective, and the servicing state office will evaluate this criterion from a state perspective.

2. Customer base/increased returns (0–10 points by three independent reviewers). Proposals that demonstrate strong growth in a market or customer base and greater Value-Added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized Value-Added returns. Describe in detail how the customer base for the product being produced will expand because of the value-added venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producers that are owners of the venture. Applicants should also reference the financial statements submitted. More points will be awarded to those applications that demonstrate the greatest expansion of the customer base and increased returns to producers.

3. Commitments and support (0–10 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature and level and quality of their contributions. End user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in-kind support as well as technical assistance. Do not submit specific contracts, letters of intent, or other supporting documents at this time. However, be sure to cite their existence when addressing this criterion. These documents will be requested at the time of grant award. Failure to produce them shall result in the withdrawal of the grant award. Points will be awarded based on the greatest level of documented commitment.

4. Management team/work force (0–10 points). The education and capabilities of project managers and those who will operate the venture must reflect the skills and experience necessary to effect project success. The availability and quality of the labor force needed to operate the venture will also be evaluated. Applicants must provide the information necessary to make these determinations. Proposals that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

5. Work plan/Budget (0–10 points). The work plan will be reviewed to determine whether it provides specific and detailed task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the proposed activities. The budget must present a detailed breakdown of all estimated costs associated with the venture's operations and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. Budgets that include more than 10% of total project costs that are ineligible will result in a determination of ineligible and the application will not be considered for funding. However, if an application with ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the grant award will be reduced accordingly. Applications without a work plan and detailed budget submitted by the application deadline will be determined to be incomplete and will not be considered for funding. Logical, realistic, and economically efficient work plans and budgets will result in higher scores.

6. Amount requested (0–5 points). One (1) point will be awarded for grant requests between $450,000 and $350,001, two (2) points will be awarded for grant requests between $350,000 and $250,001, three (3) points will be awarded for grant requests between $250,000 and $150,001, four (4) points will be awarded for grant requests between $150,000 and 50,001, and five (5) points will be awarded for grant requests of $50,000 or less. In addressing this criterion, the applicant should simply state the amount requested.

7. Project cost per owner-producer (0–5 points). This ratio is calculated by dividing the amount of VAPG funds requested by the total number of producers that are owners of the venture. The allocation of points for this criterion shall be as follows: $1–$10,000 equals 5 points, $10,001–$25,000 equals 4 points, $25,001–$50,000 equals 3 points, $50,001–$125,000 equals 2 points, $125,001–$250,000 equals 1 point, and $250,001–$500,000 equals 0 points. The applicant must state the number of owner-producers that are part of the venture. For independent producers, farmer- and rancher-cooperatives, and majority-controlled producer-based business ventures, the applicant must state the number of owners of the venture that are independent producers and are also owners of the venture. An owner cannot be considered an independent producer unless he/she is a producer of the agricultural commodity to which value

will be added as part of this project. For agricultural producer groups, the number used should be the number of producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a venture, each family member shall count as one owner-producer. The applicant must provide a list of names of the producers who are considered owner-producers for this criterion. This list will not count toward the page limit for this section of the application. Applications without enough information to determine the number of producer-owners or without a list of the producer-owners will be determined to be incomplete and will not be considered for funding. Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

8. Small farm (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Applicants who meet the definition of a small farm are awarded an additional 5 points. Applicants must report a historical average of the last three fiscal years of gross sales. Applicants must be able to verify this number at the time of grant award by showing income tax returns for the farm. Failure to do so shall result in withdrawal of the grant award.

9. Community and industry support (0–10 points). Applicants must submit a description of the local business associations, industry associations, and any political institutions that support their projects. Letters of support should not be submitted, but a description of each letter of support should be included. The description must include the following: the name of the supporting organization, the date of the letter of support, and the name of the person signing the letter. The applicant should also include a brief description of why the support of each group is valuable to the project. State and national Congressional support will not be considered for the purpose of evaluating this criterion. Applicants must be able to present a letter of support for each group listed at the time of award. Failure to demonstrate the support claimed in the application shall result in withdrawal of the grant award. Ventures that only demonstrate one type of support will not score as high for this criterion as ventures that demonstrate multiple types of support.

10. Presidential initiative of bio-energy (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Applicants must indicate whether they believe their project has a bio-energy component. Those applications that have at least 51% of project costs dedicated to working capital for a bio-energy project will receive five (5) points. Partial credit will not be given. Applicants should note that the energy must be produced primarily (*i.e.* more than 50 percent) for on-farm use, unless the energy produced qualifies as a value-added product in its own right (*e.g.* ethanol, bio-diesel). Also, the energy must be produced from a bio-based source. Examples of qualifying bio-energy projects include ethanol, bio-diesel, and energy produced from a manure digester. On-farm wind energy, on-farm solar energy, and on-farm hydro energy do not qualify for points under this criterion, even though they are eligible projects for this program. Bio-mass projects such as producing compost from manure and producing mulch from trees also do not qualify for points under this criterion, although they are eligible projects for this program.

11. Administrator points (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of RBS may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas. If an applicant wishes to be considered for these points, he/she must submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

2. *Review and Selection Process:* Each application will be assigned to a particular Rural Development State Office, based on the address of the applicant or the location of the project. This state will be known as the servicing State Office. For example, if an applicant has an address in Kansas, the application will be assigned to the Rural Development State Office in Kansas and the Kansas State Office will be the servicing State Office. Applications will then be initially reviewed by Rural Development field office personnel from the servicing State Office for completeness and eligibility. Ineligible and incomplete applications will not be further evaluated and will not be considered for funding.

All eligible and complete proposals will be evaluated by three reviewers based on criteria one through five described in section V.1. (with criteria one receiving 0–10 points for this portion of the review process). One of these reviewers will be a Rural Development employee not from the servicing State Office and the other two reviewers will be non-Federal persons. All reviewers must meet the following qualifications. Reviewers must have obtained at least a bachelors degree in one or more of the following fields: agri-business, business, economics, finance, or marketing. They must also have a minimum of three years of experience in an agriculture-related field (*e.g.* farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). If the reviewer does not have a degree in one of those fields, he/she must possess at least five years of working experience in an agriculture-related field.

Once the scores for criteria one through five have been completed by the three reviewers, the scores will be normalized, using an accepted statistical procedure. This procedure corrects for any reviewer tendencies to score applications ''high'' or ''low.'' After the normalization is complete, the three scores will be averaged to obtain an initial ranking. Then, the high and low scores for each application will be analyzed for statistically significant deviation. For those applications with significant deviation, the ranking of that application with respect to all other scored applications will be considered. In cases where the ranking indicates that the application could either move out of funding range or into funding range, two supplemental reviews will be conducted by Rural Development employees not from the state where the application was assigned. These reviews will be normalized and compared with the initial three scores. The high and low scores from all five reviews will then be discarded. Each application will then be assigned a score that is the normalized average of three scores based on criteria one through five.

Concurrent to the evaluation based on criteria one through five, the application will also receive one score from the Rural Development servicing State Office based on criteria one and six through ten (with criteria one receiving 0–15 points for this portion of the review process). The State Office may enlist the support of qualified technical experts, approved by the State Director, to assist the State Office scoring process. The score will be added to the average normalized score obtained from criteria one through five.

Finally, the Administrator of RBS will award any Administrator points based on criteria eleven. These points will be added to the cumulative score for

criteria one through ten. A final ranking will be obtained based solely on the scores received for criteria one through eleven. Applications will be funded in rank order until appropriated funds are expended. After the award selections are made, all applicants will be notified of the status of their applications by mail. No information regarding the status of an application will be released until after the award selections are made. Awardees must meet all statutory and regulatory program requirements in order to receive their award. Applicants for working capital grants must submit complete, independent third-party feasibility studies and business plans before the grant award can be finalized. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

3. *Anticipated Announcement and Award Dates:*

Award Date: The announcement of award selections is expected to occur on or about October 1, 2004.

VI. Award Administration Information

1. *Award Notices:* Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will be approved.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

2. *Administrative and National Policy Requirements:* 7 CFR parts 3015, 3019, and 4284.

To view these regulations, please see the following internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1*.

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Certification of Ownership and Uniform Federal Assistance Regulations.
- Resolution Authorizing Execution of Letter of Intent to Meet Conditions and Resolution Authorizing Execution of Request for Obligation of Funds.
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''
- Form RD 400–1, ''Equal Opportunity Agreement.''
- Form RD 400–4, ''Assurance Agreement.''
- RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

Additional information on these requirements can be found on the RBS Web site at the following Internet address: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*.

Reporting Requirements: You must provide Rural Development with a hard copy original of the following reports. The hard copies of your reports should be submitted to the Agency contact listed for your assigned state in the ''Agency Contacts'' section of this announcement. Failure to submit satisfactory reports on time may result in suspension or termination of your grant. RBS is currently developing an online reporting system. Once the system is developed, you may be required to submit some or all of your reports online instead of in hard copy.

1. Form SF–269 or SF–269A. A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (1) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent. Planning grant projects must also report the estimated increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by continuing the project into its operational phase. Working capital grants must report the increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by the project during the grant period. Projects with significant energy components must also report expected or actual capacity (*e.g.* gallons of ethanol produced annually, megawatt hours produced annually) and any emissions reductions incurred during the project.

3. Final project performance reports, inclusive of supporting documentation. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the Representative listed for the state in which the applicant is based. If you are unable to contact the Representative for your state, please contact a Representative from a nearby state or you may contact the RBS National Office at Mail Stop 3250, 1400 Independence Avenue SW, Washington, DC 20250–3250, Telephone: (202) 720–7558, e-mail: *cpgrants@usda.gov*.

Alabama

Mickie Cantey, USDA Rural Development, Sterling Center, Ste. 601, 4121 Carmichael Rd., Montgomery, AL 36106–3683, (334) 279–3617, *mickie.cantey@al.usda.gov*

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VIII. Other Information

It is suggested that applicants visit the Agricultural Resource Marketing Center (AgMRC) Web site (*http://www.agmrc.org*) for additional information on value-added agriculture. AgMRC brings together experts from three of the nation's leading agricultural universities—Iowa State University, Kansas State University and the University of California—into a dynamic, electronically based center to create and present information about value-added agriculture. The center draws on the abilities, skills and knowledge of leading economists, business strategists and outreach specialists to provide reliable information needed by independent producers to achieve success and profitability in value-added agriculture. Partial support for the center is derived from a grant administered by RBS.

Dated: May 25, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–13392 Filed 6–14–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 8, 2004 the binational panel issued its decision in the review of the final scope ruling made by the International Trade Administration, respecting Circular Welded Non-Alloy Steel Pipe from Mexico, NAFTA Secretariat File Number USA–MEX–98–1904–05. The binational panel affirmed the International Trade Administration's determination on remand. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The panel affirmed the International Trade Administration's determination on remand respecting Circular Welded Non-Alloy Steel Pipe from Mexico. The panel has directed the Secretary to issue a Notice of Final Panel Action on the 11th day following the issuance of the decision.

Dated: June 8, 2004.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 04–13363 Filed 6–14–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 052404C]

New England Fishery Management Council; Public Hearings; Correction

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

ACTION: Notice of public hearings on Amendment 2 to the Monkfish Fishery Management Plan (FMP); request for comments; correction.

SUMMARY: On May 28, 2004, NMFS published a notice announcing that the New England and Mid-Atlantic Fishery Management Councils (Councils) would be conducting public hearings on Amendment 2 to the Monkfish FMP. The notice inadvertently referred to the public hearings on Amendment 2 as ''scoping meetings.'' In addition, the notice provided an incorrect fax number for the New England Fishery Council. This action corrects those errors.

DATES: Written comments on the proposals will be accepted through July 28, 2004. The public hearings will begin Tuesday, June 15, 2004, and end on June 24, 2004. See **SUPPLEMENTARY INFORMATION** of the May 28, 2004, **Federal Register** notice for meeting dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465–0492.

SUPPLEMENTARY INFORMATION: On May 28, 2004 (69 FR 30624), NMFS published a notice in the **Federal Register** announcing that the New England and Mid-Atlantic Fishery Management Councils (Councils) proposed to take action to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, as well as a number of issues concerning the management of the monkfish fishery identified during the public scoping process. The May 27, 2004, notification inadvertently identified the upcoming public hearings as ''scoping meetings''. According to the Department's environmental review procedures for complying with the National Environmental Policy 1 Act, the formal scoping process officially begins with publication in the **Federal Register** of a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). NMFS published an NOI to prepare a Monkfish Supplemental EIS and notice of public scoping on December 10, 2001 (66 FR 63666). A notice of supplemental scoping meetings was published in the **Federal Register** on August 23, 2004 (67 FR 54609). The Councils have concluded their formal scoping process for Amendment 2. On April 30, 2004, a Notice of Availability for the Draft Supplemental EIS for Amendment 2 was published in the **Federal Register**. The New England and Mid-Atlantic Councils will now hold a series of public hearings to solicit comments on the proposals contained in the DSEIS and its related public hearing document.

Also, the May 28th **Federal Register** notification indicated that comments on the public hearing document may be faxed to the New England Council. However, an incorrect fax number was provided. This document corrects those errors.

In FR Doc. E4–1223 appearing on page 30624 in the **Federal Register** of Friday, May 28, 2004, the following corrections are made:

1. On page 30624, in the first column, in the **ADDRESSES** section, line 11, remove the fax number ''(978) 465–0492'' and in its place add ''(978) 465–3116''.

2. On page 30624, in the first column, in the **ADDRESSES** section, line 12, remove the word ''scoping''.

3. On page 30624, in the third column, under section ''Meeting Dates, Times, and Locations'', second line of the first sentence in this section, remove the word ''scoping''.

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

Dated: June 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1346 Filed 6–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060804D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) and NOAA Fisheries will hold a workshop to promote the exchange of data, information, ideas, and solutions for recreational catch per unit effort (CPUE) statistics as indicators of West Coast groundfish stock abundance.

DATES: The two-day workshop will begin at 8:30 a.m. on Tuesday, June 29 and will continue until business for the day is completed. The workshop will reconvene at 8:30 a.m. on Wednesday, June 30, 2004 and will continue until business is completed. Public comments will be allowed at times to be specified by the chair.

ADDRESSES: The workshop will be held at the Southwest Fisheries Science Center, Meeting Room 188, 110 Shaffer Road, Santa Cruz, CA 95060.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Ralston, SSC Groundfish Subcommittee Chair, telephone: (831) 420–3949; Mr. John DeVore, Pacific Fishery Management Council, telephone: (503) 820–2280; or Ms. Stacey Miller, Northwest Fisheries Science Center, telephone: (206) 860–3480.

SUPPLEMENTARY INFORMATION: The purpose of the Recreational CPUE Statistics Workshop is to review existing sources of recreational data on the West Coast and to reach a broad consensus and understanding of the availability of recreational fisheries data and methods to calculate CPUE statistics for use in stock assessments. The importance of recreational CPUE statistics in groundfish stock assessments has grown in recent years. Council- sponsored assessments of bocaccio, cabezon, cowcod, black rockfish, lingcod, and yelloweye rockfish have all evaluated time series of recreational CPUE as indicators of stock abundance. As more of the minor groundfish species become assessed, CPUE statistics derived from catch rates in sport fisheries will likely play an important role in stock evaluation.

Although non-emergency issues not contained in the meeting agenda may come before the workshop participants for discussion, those issues may not be the subject of formal workshop action during this meeting. Workshop 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 workshop participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1339 Filed 6–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060804E]

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) Ad Hoc Groundfish Trawl Individual Quota Analytical Team (TIQ Analytical Team) will hold a working meeting which is open to the public.

DATES: The TIQ Analytical Team working meeting will begin Thursday, July 1, 2004 at 9:30 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. and continue until business for the day is complete on Friday, July 2, 2004.

ADDRESSES: The meeting will be held at: The Embassy Suites Hotel, 7900 NE. 82nd Avenue, Portland, OR 97220; telephone: (503) 460–3000

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQ Analytical Team meeting is to plan a preliminary analysis for a generalized individual fishing quota (IFQ) program for the groundfish trawl fishery and identify specific tasks to be carried out. Related data collection issues will also be discussed.

Although non-emergency issues not contained in the TIQ Analytical Team meeting agenda may come before the group for discussion, those issues may not be the subject of formal committee action during these meetings. TIQ Analytical Team action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the group'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: June 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1341 Filed 6–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060804C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Council's Groundfish Management Team (GMT) will hold a working meeting to develop the draft environmental impact statement for harvest specifications and management measures for 2005–06 West Coast groundfish fisheries. This meeting is open to the public.

DATES: The GMT working meeting will convene on Monday, June 28, 2004 at 1 p.m. and may go into the evening until business for the day is completed. The GMT meeting will reconvene from 8:30 a.m. to 5 p.m. Tuesday, June 28 through Thursday, July 1 until business for the day is completed.

ADDRESSES: The GMT working meeting will be held at the Pacific Fishery Management Council office, West Conference Room, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220; telephone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council Staff Officer for Groundfish; 503–820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to develop the draft environmental impact statement for harvest specifications and management measures for 2005–2006 West Coast groundfish fisheries and address other assignments relating to groundfish management.

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 requiring 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: June 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1342 Filed 6–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Munitions System Reliability will meet in closed session on June 25, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review the efforts thus far to improve the reliability of munitions systems and identify additional steps to be taken to reduce the amount of unexploded ordnance resulting from munitions failures. The Task Force will: conduct a methodologically sound assessment of the failure rates to U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of

Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: June 8, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–13351 Filed 6–14–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 15, 21(b)(1), 24, 26, 37, and 38 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notices and comment.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, telephone (202) 761–1448 (ext. 600).

Dated: June 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, DoD.

BILLING CODE 5001–06–M

PROPOSED REVISION TO RULE 15

ATTORNEYS

~~**RULE 15. DISCIPLINARY ACTIONS**~~

Rule 15. DISBARMENT AND DISCIPLINARY ACTION

~~**(a)** The Model Rules of Professional Conduct of the American Bar Association are hereby adopted as the rules of conduct for members of the Bar of this Court. After notice, investigation, and hearing as provided in this rule, the Court may take any disciplinary action it deems appropriate for failure to comply with the Model Rules of Professional Conduct.~~

~~**(b)** For purposes of this rule, the Court shall appoint an Investigations Committee consisting of 5 members of the Bar of this Court who shall be appointed for a period of 3 years. The Investigations Committee shall consider such complaints as may be referred to it for investigation, including the taking of evidence, and shall submit a report of such investigation to the Court.~~

~~**(c)** Upon receipt and docketing of a written complaint under oath of unprofessional conduct against a member of its Bar, the Court will cause a copy thereof to be served by certified mail, return receipt requested, on the attorney thus accused. The Clerk will, in addition, acknowledge by letter, to the person filing such complaint, the receipt thereof. The accused attorney will answer the complaint by~~

~~filing a formal pleading responsive to each allegation of misconduct within 30 days of receipt of the complaint, but extensions of time may be granted by order of the Court on the accused attorney's application. A complaint will be docketed only if the Court makes a preliminary determination that it is not frivolous.~~

~~**(d)** On consideration of the complaint and answer, and if it believes a substantial basis exists for the complaint, the Court will refer the matter to its Investigations Committee for consideration under subsection (b). Otherwise, the Court will dismiss the complaint. Any such investigation will be held privately, unless the accused attorney requests that it be opened to the public.~~

~~**(e)** On receiving the report of the Investigations Committee, the Court may dismiss the complaint or order the matter set down for hearing, giving due notice to the accused attorney. At the hearing, the accused attorney will be given opportunity to present such matters relevant to the complaint as he or she deems appropriate and to examine any witnesses against such attorney. All documents received in connection with a complaint under this rule shall be furnished to the accused attorney. A majority vote of the Court is necessary to find an attorney guilty of unprofessional conduct and to fix any penalty.~~

~~**(f)** (1) When it is shown to the Court that any member of its Bar has been disbarred or suspended from practice by any court, such member will be forthwith called upon to show cause within 30 days why similar action should not be taken by this Court. Upon the filing of the member's answer to an order to show cause, or upon expiration of 30 days if no answer is filed, the Court will enter an appropriate order; but no order of disbarment or suspension will be entered except with the concurrence of a majority of the judges participating.~~

~~(2) When it has been shown to the Court that a member of the Bar of the Court has been convicted by court-martial or by other court of competent jurisdiction of conduct which evidences a failure to comply with the Model Rules of Professional Conduct and such conviction has become final, the Court may, in lieu of the complaint and investigative procedures set forth in subsections (b) through (e), initiate a disciplinary action under this rule by issuance of an order to such person to show cause why the person should not be disbarred. Upon the filing of the member's answer to an order to show cause, or upon expiration of 30 days if no answer is filed, the Court will set the matter~~

~~for hearing, giving the member due notice thereof, or enter such other order as may be deemed appropriate; but no order of disbarment or suspension will be entered except with the concurrence of a majority of the judges participating.~~

~~**(g)** Penalties for unprofessional conduct may extend to reprimand, suspension, or disbarment.~~

~~**(h)** Except for an order of reprimand, suspension, or disbarment, no papers, pleadings, or other information relative to a complaint in a disciplinary proceeding will be published or released to the public without prior approval of the Court. The docket of matters arising under this rule shall not be available to the public.~~

[Amended July 16, 1990, effective August 15, 1990; amended March 26, 1998, effective May 1, 1998.]

(a) The Model Rules of Professional Conduct of the American Bar Association are hereby adopted as the rules of conduct for members of the Bar of this Court. To the extent that these rules are inconsistent with applicable service rules of professional conduct, the conduct of judge advocates will be reviewed under the rules of their service. To the extent that these rules are inconsistent with the rules of professional conduct which apply in the location where a civilian member of the bar maintains a principal office, the conduct of civilian counsel will be reviewed under the rules of their licensing jurisdiction.

(b) Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 30 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

(c) If it appears that a member of the Bar of this Court has engaged in conduct unbecoming a member of the Bar, or failed to comply with this Rule or any other Rule or order of the Court, the Court may enter an order affording the member an opportunity to show cause, within 30 days, why disciplinary action should not be taken. If the member, in responding to the show cause order, raises material questions of fact, the Court may appoint a special master who shall hold a hearing and prepare proposed findings of fact and recommendations. After affording the member of the

bar a reasonable opportunity to prepare written objections to the proposed findings of fact and recommendations, the proposed findings and recommendations, together with any written objections thereto, shall be submitted to the Court. Upon due consideration thereof, the Court may take such disciplinary action as it deems appropriate against the member of the Bar.

Explanatory Note for Rule 15 (Disbarment and Disciplinary Action):

The current Rule 15 dates back to the early 1970's, and it mandates a cumbersome process for disciplining attorneys involving the appointment of a five-member Investigations Committee. There is no record that it has ever been used. The new proposal, taken largely from Rule 8 of the Rules of the Supreme Court of the United States, along with process provisions in federal courts of appeals local rules, is more efficient, and it will provide a tool for the Court to impose needed discipline in a more timely manner. Instead of a five-member committee, the Court may appoint a special master to conduct a hearing, consider questions of fact, and make recommendations to the Court. Insubstantial questions of fact that are not relevant to the Court's disposition of the matter will not be considered material for purposes of this rule. The member would be afforded a reasonable opportunity to prepare written objections to the proposed findings of fact. The proposal adopts the ABA's Model Rules of Professional Conduct to the extent that they are not inconsistent with service regulations or rules of civilian licensing jurisdictions.

PROPOSED REVISION TO RULE 21(b)(1)

RULE 21. SUPPLEMENT TO PETITION FOR GRANT OF REVIEW

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix required by Rule 24(a), shall conform to the provisions of Rules 24(b), 35A, and 37, and shall contain:

(1) A statement of the errors assigned for review by the Court, **expressed concisely in relation to the circumstances of the case, without unnecessary detail. The assigned errors should be short and should not be argumentative or repetitive.**

Explanatory Note for Rule 21(b)(1) (Supplement to Petition for Grant of Review):

The added language is taken from Rule 14 of the Rules of the Supreme Court of the United States. Its purpose is to encourage counsel to be concise and clear in drafting issues for review. The rule recognizes, however, that conciseness is a relative term and the length of the statement of the errors assigned for review will vary, depending on the circumstances of each case. Nevertheless, within that framework, counsel should strive to make the statement of errors as precise as possible and avoid argumentative or repetitive language.

PROPOSED REVISION TO RULE 24(a)

RULE 24. FORM, CONTENT, AND PAGE LIMITATIONS

(a) Form and content. All briefs shall conform to the printing, copying, and style requirements of Rule 37, shall be legible, and shall be substantially as follows:

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, (Appellee) (Appellant) (Respondent) v. _____ (Full typed name, rank, & service of accused) ~~(Service no. ___)~~, (Appellant) (Appellee) (Petitioner)	BRIEF ON BEHALF OF (APPELLANT, APPELLEE, ETC.) Crim.App. Dkt. No. _____ USCA Dkt. No. _____

Index of Brief
[Same.]
Table of Cases, Statutes, and Other Authorities
Issue(s) Presented
[Same.]
Statement of Statutory Jurisdiction
[Same.]
Statement of the Case
[Same.]
Statement of Facts
[Same.]
Summary of Argument
[Same.]
Argument
[Same.]
Conclusion
[Same.]
Appendix
[Same.]

(b) Page limitations. Unless otherwise authorized by order of the Court, by motion of a party granted by the Court (see Rule 30), **or by Rule 24(c)**, the page limitations for briefs filed with the Court, not including appendices, shall be as follows:

(1) Briefs of the appellants/petitioners **shall not exceed 30 pages;**

(2) Answers of the appellees/petitioners **shall not exceed 30 pages;**

(3) Replies of the appellants/petitioners **shall not exceed 15 pages.**

(c) Type-volume limitations.

(1) A brief of the appellants/petitioners and an answer of the appellees/respondents is acceptable if:

- **it contains no more than 14,000 words; or**
- **contains no more than 1,300 lines of text.**

(2) A reply is acceptable if it contains no more than half of the type-volume specified in Rule 24(c)(1).

(3) Headings, footnotes, and quotations count toward the word and line limitations. The index, table of cases, statutes, and other authorities, the appendix and any certificates of counsel do not count toward the limitation.

(d) Certificate of Compliance. A brief submitted under Rule 24(c) must include a certificate stating that the brief complies with the type-volume limitation and Rule 37. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

(i) the number of words in the brief; or
(ii) the number of lines of monospaced type in the brief.

(e) Form of Certificate of Compliance.

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 24(d) because:

[principal brief may not exceed 14,000 words or 1,300 lines; reply or amicus brief may not exceed 7,000 words or 650 lines; line count can be used only with monospaced type]

☐ **This brief contains _____ [*state the number of*] words,**

or

☐ **This brief contains _____ [*state the number of*] lines of text.**

2. This brief complies with the typeface and type style requirements of Rule 37 because:

[12-point font must be used with monospaced typeface, such as Courier or Courier New]

☐ **This brief has been prepared in a monospaced typeface using _____ [*state name and version of word processing program, e.g., Microsoft Word Version 2000 with* _____ *[state number of characters per inch and name of type style]*.**

/s/ _____

Attorney for _____

Dated: _____

Explanatory Note for Rule 24 (Form, Content and Page Limitations of Briefs):

The proposal contains several changes. The first is to delete the requirement to include the appellant's service number (since 1972, the military has used the social security number). This change is recommended to protect privacy interests and is consistent with recent action of the Judicial Conference. It also anticipates the possible future privacy issue where pleadings are filed electronically and are available on line.

The Certificate of Compliance is to ensure that the briefs comply with Rule 24 and Rule 37 as to size and typeface. It is taken from a similar certificate used in the federal circuit courts of appeal. Counsel are reminded that the Court requires the use of monospaced typeface, e.g., Courier or Courier New, and that the use of proportional typeface, such as Times New Roman, is not authorized under these rules.

PROPOSED REVISION TO RULE 26(d)

Rule 26. AMICUS CURIAE BRIEFS

(d) ~~**A brief of an amicus curiae shall not exceed 30 pages, excluding appendices.**~~ **Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.**

Explanatory Note for Rule 26 (Amicus Curiae Briefs):

The purpose of this change is to make Rule 26 consistent with the changes proposed in Rule 24. It follows Rule 29(d) of the Federal Rules of Appellate Procedure.

PROPOSED REVISION TO RULE 37

RULE 37. PRINTING, COPYING AND STYLE REQUIREMENTS

(a) Printing. Except for records of trial and as otherwise provided by Rule 27(a)(4), all pleadings or other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white unglazed paper, 8.5 by 11 inches in size, securely fastened in the top left corner. "~~With the exception of footnotes, which may be 11 point proportionally spaced typeface, a~~**A**ll printed matter must appear in ~~non-proportional~~ **monospaced** typeface, **e.g.**, **Courier or Courier New**, using 12-point type with no more than ten **and ½** characters per inch. **Margins must be at least 1 inch on all four sides. Page numbers may be placed in the margin but no text may appear in the margin.** ~~Headings, footnotes, and block quotations may be single-spaced, but should not be used excessively to avoid page limit requirements.~~"

Explanatory Note for Rule 37 (Printing, Copying, and Style Requirements of Pleadings):

The rule on the number of characters per inch is changes from 10 to 10 ½, because some word processing programs use this standard and it is also acceptable to the Court. The rule on the size of the margin has been clarified so it is easier to understand. The previous rule referred to the size of the text, rather than the margins.

PROPOSED REVISION TO RULE 38

RULE 38. SIGNATURES

(a) General. Except for documents filed in propria persona and those provided for in subsection (b), all original pleadings or other papers filed in a case will bear the signature of at least one counsel who is a member of this Court's Bar and who is participating in the case. The name, address, telephone number, **Court Bar number,** and rank, if any, of the person signing, together with the capacity in which such counsel signs the paper, will be included. This signature will constitute a certificate that the statements made in the pleading or paper are true and correct to the best of the counsel's knowledge, information, or belief, and that the pleading or paper is filed in good faith and not for the purpose of unnecessary delay. A counsel who signs a pleading "for" some other counsel whose name is typed under such signature must, in addition, affix their own signature in a separate signature block with their own name, address, telephone number, **Court Bar number**, and rank, if any, typed thereunder.

(b) [Same.]

Explanatory Note for Rule 38 (Signatures on Pleadings):

The proposed change to Rule 38 would mandate the inclusion of Court Bar numbers of attorneys signing pleadings filed with the Court. This requirement will provide a reminder of the rule that at least one attorney must be a member of the Court's Bar. There have been several recent instances of non-member attorneys filing pleadings with the Court who did not move to appear pro hac vice. Attorneys may obtain bar numbers from the Clerk's Office. This new rule would be consistent with the requirements of numerous other jurisdictions.

[FR Doc. 04–13118 Filed 6–14–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alteration to S322.50 DMDC adds a routine use to permit the release of records to the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

DATES: This action will be effective without further notice on July 15, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency 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 system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 3, 2004, 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: June 7, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.50 DMDC

SYSTEM NAME

Defense Eligibility Records (May 11, 2004, 69 FR 26081).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph ''To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.''

* * * * *

S322.50 DMDC

SYSTEM NAME:

Defense Eligibility Records.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces and reserve personnel and their family members; retired Armed Forces personnel and their family members; 100 percent disabled veterans and their dependents or survivors; surviving family members of deceased active duty or retired personnel; active duty and retired Coast Guard personnel and their family members; active duty and retired Public Health Service personnel (Commissioned Corps) and their family members; active duty and retired National Oceanic and Atmospheric Administration employees (Commissioned Corps) and their family members; and State Department employees employed in a foreign country and their family members; civilian employees of the Department of Defense; contractors; and any other individuals entitled to care under the health care program or to other DoD benefits and privileges; providers and potential providers of health care; and any individual who submits a health care claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name, Service or Social Security Number, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, disability documentation, Medicare eligibility and enrollment data, index fingerprints and photographs of beneficiaries, blood test results, dental care eligibility codes and dental x-rays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23 (Internal Security); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

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 the Department of Health and Human Services; Department of Veterans Affairs; Department of Commerce; Department of Transportation for the conduct of health care studies, for the planning and allocation of medical facilities and providers, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes Social Security Number, name, age, sex, residence and demographic parameters of each Department's enrollees and family members.

To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data

matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

To each of the fifty states and the District of Columbia for the purpose of conducting an on going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

To provide dental care providers assurance of treatment eligibility.

To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official DoD business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage.

Note: Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

To the Department of Health and Human Services (HHS) for purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to a HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage.

Note: Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

To the Department of Health and Human Services for purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

The DoD 'Blanket Routine Uses' published at the beginning of DLA'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:

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures (*e.g.*, fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, DSS–B, 8725 John J. Kingman Road, Stop 6220, 2533 Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Individuals, personnel pay, and benefit systems of the military and civilian departments and agencies of the

Defense Department, the Coast Guard, the Public Health Service, Department of Commerce, the National Oceanic and Atmospheric Administration, Department of Commerce, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–13352 Filed 6–14–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 July 15, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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 Acting 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: June 8, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress 2004–2007 System Clearance.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 906,322.

Burden Hours: 231,800.

Abstract: This clearance request covers all pilot, field, and full scale assessment and survey activities of the National Assessment of Educational Progress. Students are assessed and surveyed in the 4th, 8th and 12th grades as well as some of their teachers and school administrators.

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 2566. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13361 Filed 6–14–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2004.

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 Acting 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 8, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Teacher Follow-Up Survey: 2004–2005.

Frequency: One time.

Affected Public: Individuals or household (primary), not-for-profit institutions, and State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 7,600 and Burden Hours: 3,595.

Abstract: This survey of 8,300 public and private elementary and secondary school teachers is the fifth in a series. It is a follow-up to the 2003–2004 Schools and Staffing Survey (SASS) and collects data on public school and private school teachers' characteristics and attitudes, as well as the factors affecting their decisions to stay in or leave the teaching profession.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2547. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13362 Filed 6–14–04; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 2004.

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. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 9, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Extension.

Title: Sign-on Form for Educational Partnerships and Family Involvement.

Frequency: One time.

Affected Public: Not-for-profit institutions (primary), Businesses or other for-profit, State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses—720; *Burden Hours*—60.

Abstract: Educational Partnerships and Family Involvement promotes educational opportunities for parents and youth and disseminates publications and relevant information.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2559. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina .Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–13480 Filed 6–14–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, July 8, 2004, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L268, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on Site Building Demolition Planning.
2. Update from Site and Regulators on Original Landfill Remediation Planning.
3. Follow-up from Community Workshop on Future Public Participation.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should

contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on June 9, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–13405 Filed 6–14–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12496–000.

c. *Date filed:* May 10, 2004.

d. *Applicant:* Rugraw LLC.

e. *Name of Project:* Lassen Lodge Project.

f. *Location:* On the South Fork of Battle Creek, in Tehama County, California. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mrs. Gertrud Rudolph, President, Rugraw, Inc., 6935 Pine Drive, Anderson, CA 96007, (916) 243–2914 or Arthur Hagood, Synergics Energy Services, LLC, 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 80-foot-long, 5-foot-high grouted rock and boulder diversion structure and would have a negligible impoundment; (2) a proposed 17,000-foot-long, 6-foot-diameter steel penstock; (3) a proposed powerhouse containing one generating unit having a total installed capacity of 7 megawatts; (4) a proposed 12-mile-long, 60 kilovolt transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 24 gigawatt-hours that would be sold to a local utility.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free (866) 208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1343 Filed 06–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12495–000.

c. *Date filed:* May 7, 2004.

d. *Applicant:* Cascade Creek, LLC.

e. *Name of Project:* Cascade Creek Project.

f. *Location:* On Swan Lake and Cascade Creek, near the town of Petersburg, Alaska. The proposed would be located within the Tonggrass National Forest on lands owned by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steven C. Marmon, Manager, 3633 Alderwood Avenue, Bellingham, WA 98225, (360) 738–9999.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of; (1) A proposed 267-foot-long, 35-foot-high Dam on Swan Lake, (2) the existing reservoir would have a surface area of 600 acres with a storage capacity of 97,500 acre-feet and normal water surface elevation of 1,550 feet mean sea level, (3) a proposed 13,000-foot-long, 10-foot-diameter steel penstock or tunnel, a proposed powerhouse containing four generating units having a total installed capacity of 80 megawatts, (4) a proposed 20-mile-long 138 kilovolt transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 300 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free (866) 208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1344 Filed 6–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12494–000.

c. *Date filed:* May 3, 2004.

d. *Applicant:* Davis Hydro LLC.

e. *Name of Project:* Rock Creek Retrofit Project.

f. *Location:* On the North Fork Feather River, in Plumas County, California, the Dam is owned by Pacific Gas and Electric Company. The proposed project is for additional capacity at the existing License project No. 1962 operated by Pacific Gas and Electric Company.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Richard Ely, Davis Hydro LLC, 27254 Meadowbrook Drive, Davis, CA 95616, (530) 753–8864.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing 126-foot-high, 550-foot-long concrete Rock Creek Diversion Dam, (2) an existing impoundment having a surface area of 80 acres and a storage capacity of 4,669 acre-feet having a normal water surface elevation of 2,216.2 feet mean sea level, (3) a proposed powerhouse with two generating units with a total installed capacity of 1.38 megawatts, (4) a proposed 100-foot-long 2400 kilovolt transmission line and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 7 gigawatt-hours and project energy would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free (866) 208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1345 Filed 6–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

June 10, 2004.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 17, 2004, 2 p.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on June 17, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Linda Mitry,

Acting Secretary.

[FR Doc. 04–13604 Filed 6–10–04; 3:18 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0077, FRL–7773–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990, EPA ICR Number 1596.06, OMB Control Number 2006–0226

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 16, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0077, to EPA online using EDOCKET (our preferred method), by e-mail to *A-And-R-Docket@epa.gov,* or by mail to: EPA Docket Center, Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Thundiyil, Global Programs Division, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9464; fax number: (202) 343–2363; e-mail address: *thundiyil.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0077, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for

the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action aremanufacturers, importers, formulators and processors of substitutes for ozone-depleting substances.

Title: Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990.

Abstract: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under section 612 for anyone who sells or, in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Under CAA section 114(c), emissions information may not be claimed as confidential.

To develop the lists of acceptable and unacceptable substitutes, the Agency must assess and compare ''overall risks to human health and the environment'' posed by use of substitutes in the context of particular applications. EPA requires submission of information covering a wide range of health and environmental factors. These include intrinsic properties such as physical and chemical information, ozone depleting potential, global warming potential, toxicity, and flammability, and use-specific data such as substitute applications, process description, environmental release data, environmental fate and transport, and cost information. Once a completed submission has been received, a 90 day review period under the SNAP program will commence. Any substitute which is a new chemical must also be submitted to the Agency under the Premanufacture Notice program under the Toxic Substances Control Act (TSCA). Alternatives that will be used in pesticide formulations must be filed jointly with EPA's Office of Pesticide Programs and with SNAP.

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

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: For persons filing a SNAP Information Notice or petition, the reporting burden is estimated to average 150 hours per year from each of approximately 14 submitters, with estimated labor costs of roughly $8400 and average annualized startup costs of $3153 for gathering information from each respondent. For persons filing a TSCA/SNAP Addendum, the reporting burden is estimated to average 46 hours per year from each of two submitters at a labor cost of $2576 each. For persons filing a notification of test marketing activity, the reporting burden is estimated to average 2 hours per year from one submitter at a cost of $112. For persons keeping records supporting use of a substitute subject to narrowed use limits, the recordkeeping burden is estimated to average 27 hours per year from approximately 250 users, at an average cost of $1512 each. For persons keeping records of a small volume use, the recordkeeping burden is estimated to average 12 hours per year from each of approximately ten companies at an average cost of $672 each. The total burden on respondents is estimated at 8972 hours per year at a cost of roughly $547,000.

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

Dated: June 1, 2004.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. 04–13409 Filed 6–14–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From June 10, 2004, Open Meeting

June 9, 2004.

The following item has been deleted from the list of Agenda items scheduled for consideration at the June 10, 2004, Open Meeting and previously listed in the Commission's Notice of June 3, 2004.

6	Wireline Competition	*Title:* Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers (CC Docket No. 01–338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98); and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). *Summary:* The Commission will consider an Order on Reconsideration concerning requests from BellSouth and Sure West to reconsider and/or clarify unbundling obligations relating to multiple dwelling units and the network modification rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–13568 Filed 6–10–04; 1:18 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. S&T Bancorp, Inc., Indiana, Pennsylvania; to acquire up to 9.9 percent of the voting shares of Fidelity Bancorp, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire Fidelity Savings Bank, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. North Valley Bancorp, Redding, California; to acquire 100 percent of the voting shares of Yolo Community Bank, Woodland, California.

Board of Governors of the Federal Reserve System, June 8, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13350 Filed 6–14–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 031 0134]

Southeastern New Mexico Physicians IPA, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 6, 2004.

ADDRESSES: Comments should refer to ''Southeastern New Mexico Physicians IPA, Inc., *et al.*, File No. 031 0134,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the

above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 7, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 6, 2004. Comments should refer to ''Southeastern New Mexico Physicians IPA, Inc., *et al.*, File No. 031 0134,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Southeastern New Mexico Physicians IPA, Inc. (SENM), and two of its non-physician employees. The agreement settles charges that these parties violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among members of SENM to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

SENM is an independent practice association (IPA) with 68 physician members. SENM's members represent 73% percent of all physicians independently practicing (that is, those not employed by area hospitals) in and around Roswell, New Mexico, which is located in southeastern New Mexico.

SENM members refuse to deal with health plans on an individual basis. Instead, two SENM employees, Barbara Gomez and Lonnie Ray, negotiate price and other contract terms with health plans that desire to contract with SENM members.

Contracts that Ms. Gomez and Ms. Ray negotiate for SENM with health plans are presented to SENM's Managed Care Contract Committee for approval, then to SENM's Board of Directors. After SENM's Board approves it, a contract is presented to the general membership, which votes on whether SENM should accept the contract. If a majority of SENM members vote to accept, SENM's president signs the contract. Following this process, respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, have carried out collective negotiations with health plans, and have orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents' desired terms. Although SENM purported to operate as a ''messenger''—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.[2]

Respondents have succeeded in forcing numerous health plans to raise fees paid to SENM members, and thereby raised the cost of medical care in the Roswell area. SENM engaged in no efficiency-enhancing integration sufficient to justify respondents' joint negotiation of fees. By orchestrating agreements among SENM members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. The order also includes temporary ''fencing-in'' relief to ensure that the alleged unlawful conduct by respondents does not continue.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] Some arrangements can facilitate contracting between physicians and payors without fostering an agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a ''messenger model'' arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice at 125. *See http://www.ftc.gov/reports/hlth3s.htm#8.*

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' The arrangement, however, must not facilitate the refusal of, or restrict, physicians from contracting with payors outside of the arrangement.

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Also, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, for a period of three years, bars Ms. Gomez and Ms. Ray from negotiating with any payor on behalf of SENM or any SENM member, and from advising any SENM member to accept or reject any term, condition, or requirement of dealing with any payor. This temporary ''fencing-in'' relief is included to ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for three years, requires respondents to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, which applies only to SENM, requires SENM to distribute the complaint and order to all physicians who have participated in SENM, and to payors that negotiated contracts with SENM or indicated an interest in contracting with SENM. Paragraph V.B requires SENM, at any payor's request and without penalty, or within one year after the Order is made final, to terminate its current contracts with respect to providing physician services. Paragraph V.C requires SENM to distribute payor requests for contract termination to all physicians who participate in SENM. Paragraph V.D.1.b requires SENM to distribute the complaint and order to any payors that negotiate contracts with SENM in the next three years.

In the event that SENM fails to comply with the requirements of Paragraph V.A or Paragraph V.D.1.b, Paragraph VI would require Ms. Ray to do so.

Paragraphs VII and VIII generally require Ms. Gomez and Ms. Ray to distribute the complaint and order to physicians who have participated in any group that has been represented by Ms. Gomez or Ms. Ray since August 1, 2001, and to each payor with which Ms. Gomez or Ms. Ray has dealt since August 1, 2001, for the purpose of contracting.

Paragraphs V.E, V.F, VIII.B, IX, and X of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–13483 Filed 6–14–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Public Comment To Aid Staff in Preparing the FACT Act Section 318(a)(2)(C) Study

AGENCY: Federal Trade Commission.

ACTION: Notice and request for public comment.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is conducting a study of the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, as required by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act). The Commission is requesting public comment on a number of issues to assist in preparation of the study.

DATES: Public comments must be received on or before July 16, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FACT Act section 318(a)(2)(C) Study, Matter No. P044804'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *FACTAStudy@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT:

Carolyn Cox, Economist, (202) 326–3434, Federal Trade Commission, Bureau of Economics, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Requirements Under the Fair Credit Reporting Act

Section 615 of the Fair Credit Reporting Act currently requires parties who take an adverse action on the basis of information contained in a consumer report to provide consumers with an adverse action notice that, among other things, contains the name, address, and telephone number of the consumer reporting agency that furnished the report, that notifies the consumer of his or her right to receive a free copy of a consumer report from the consumer reporting agency, and explains his or her right to dispute with the consumer reporting agency the accuracy or completeness of any information in that report. Section 615 provides no time limit within which the notice must be supplied. As a practical matter, however, most creditors who are required to supply an adverse action notice by the Equal Credit Opportunity Act [section 202.9 of Regulation B, 12 CFR 202.9] , which requires notification within 30 days [section 202.9(a)(1) of Regulation B, 12 CFR 202.9(a)(1)], combine the FCRA and ECOA notices.

A consumer who requests a copy of his or her credit report subsequent to receiving an adverse action notice may receive a credit report that looks different than the one that the creditor relied on in making its decision. For example, the report that the consumer receives may contain more up-to-date information or be in a more consumer-friendly format. In addition, if the creditor and the consumer each provided different identifying information to request a copy of the report, then the reports received by the two parties may differ. This difference could, for example, be due to errors in transcription by clerks or differences in the amount of the identifying information provided. In some instances, the creditor may even receive multiple reports from a single consumer reporting agency on an individual consumer, while the consumer only receives one report. Thus, the report that the consumer receives and the report that the creditor receives and relies on may differ.

In contrast, a consumer who experiences an adverse action regarding employment obtains a copy of the same consumer report that the party taking the adverse action relied on. Section 604 (b) (3) (A) of the FCRA notes that, except under certain circumstances, ''in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—(i) a copy of the report; and (ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission, under section 609 (c)(1) [section 1681g(c)(1) of this title].'' [1]

B. Study Required by the FACT Act

The FACT Act was signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. Section 318 (a) (2) (C) of the Act requires the FTC to examine ''the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, including—(i) the extent to which providing such reports to consumers would increase the ability of consumers to identify errors in their credit reports; and (ii) the extent to which providing such reports to consumers would increase the ability of consumers to remove fraudulent information from their credit reports.'' Section 318 (a) (3) specifies that the Commission ''shall consider the extent to which such requirements would benefit consumers, balanced against the cost of implementing such provisions.'' [2]

We believe it is significant that the Act requires the FTC to study only the effects of a consumer receiving a copy of the ''same credit report that the creditor relied on'' following an adverse action. Although ''credit report'' is a commonly-used non-technical term for ''consumer report,'' because the provision refers also to ''creditors,'' we interpret the study to encompass only the use of consumer reports in credit transactions. Of course, consumer reports are not only used to determine credit eligibility; they may also be used for the purposes of reviewing an account or making decisions involving insurance, employment, or government benefits.[3] Consumer reporting agencies may also provide reports to persons who have a ''legitimate business need'' for the information, such as a landlord deciding whether to rent an apartment to a consumer.[4] The scope of the study, however, would not include situations in which these other users of consumer reports rely on a consumer report in taking an adverse action.

Although the FACT Act requires the FTC to study ''the effects of requiring that a consumer * * * receives a copy of the same credit report * * * relied on'' following an adverse action, it does not specify who would be responsible for supplying a copy of the credit report or the manner in which it would be supplied. In particular, the Act does not specify whether the consumer reporting agency or the creditor would be required to supply the consumer with a copy of ''the same credit report'' or the manner by which they should fulfill the requirement. For example, a creditor could send a copy of the credit report or a notification of the consumer's right to receive a credit report from them, along with each adverse action notice. Alternatively, a consumer reporting agency could comply with a requirement to supply the same report relied on by a creditor in taking an adverse action to consumers who experience an adverse action by sending a copy of the report to consumers (regardless of whether they will experience an adverse action) at the same time that they send a copy to the creditor, or by responding to requests of consumers who experience an adverse action related to credit and request a copy of their report.

[1] The exceptions have to do with interstate truckers [section 604 (b) (3) (C) of the FCRA, 15 U.S.C. 1681b(b)(3)(C)] and investigations of workplace misconduct [section 603(x) of the FCRA, 15 U.S.C. 1681a(x)].

[2] Section 318 (b) notes that ''Not later than 1 year after the date of enactment of this Act, the Chairman of the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study under this section, together with such recommendations for legislative or administrative actions as may be appropriate.''

[3] FCRA section 604(a)(3); 15 U.S.C. 1681b(a)(3).

[4] FCRA section 604(a)(3)(F); 15 U.S.C. 1681b(a)(3)(F).

The Act also does not define ''the same credit report that the creditor relied on,'' and it is not clear in all situations what the term means. For example, in the case of a creditor who uses a credit score to evaluate a consumer's creditworthiness, the ''same'' report could consist of only the score itself or it could also include all of the information that was used to derive the score. Likewise, if a creditor received multiple scores concerning an individual, the ''same'' report could mean only the score or scores that the creditor chose to use or all of the scores the creditor received. In addition to issues regarding the content of the report, providing the ''same'' report to consumers as to creditors also raises issues concerning the format of the report. If the report that the creditor relies on is received in an electronic file that can only be understood using queries made through a specialized software package, would the ''same'' report consist of the unintelligible electronic files, or might it consist of a reporting of the information contained in the files in some new, more consumer friendly format? The costs and benefits associated with providing the consumer a copy of ''the same report'' depend on what one means by the term ''the same report.''

II. Request for Public Comments

The Commission is seeking comment on all aspects of the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action. The Commission specifically requests comment on the questions noted below, but these questions are intended to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence upon which those comments are based.

The Commission requests that, as a threshold matter, parties explain how they define ''the same report that the creditor relied on.'' In addition, in answering the questions please use both the most restrictive and the most expansive definition possible and feel free to comment on how your answer would change if an alternative definition were used. For example, in instances where a creditor used a credit score, under the most restrictive definition, the ''same report'' would consist of only the score, while under the most expansive definition, the ''same report'' would include the score and the underlying data in a consumer-friendly format. Thus, in instances where a creditor used a credit score, the Commission seeks comment on the benefits and costs under these two scenarios, but welcomes comment on additional scenarios that might arise if an alternative definition were used.

The Commission notes that the term ''adverse action'' has a specific definition under the FCRA. In particular, in terms of credit, the term adverse action ''has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act [Section 1691(d)(6)] of this title * * *.'' Thus, the term adverse action means ''(i) a refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered; (ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or (iii) a refusal to increase the amount of credit available to an applicant who has made an application for an increase.'' Therefore, situations that trigger a risk-based pricing notice would not be considered an ''adverse action'' for the purposes of this study. The Commission requests that comments use ''adverse action'' as it is defined under the FCRA, but welcomes parties to opine on how a more expansive definition of the term ''adverse action'' (*e.g.*, one that included situations that trigger a risk-based pricing notice) would impact specific scenarios.

A. Extent to Which the Proposed Requirement Would Benefit Consumers

1. How does the credit report received by the creditor currently differ from the information that consumers receive from a consumer reporting agency when they request a copy of their credit report in response to an adverse action notice?

a. What are the different types of consumer reports that are used by a creditor (*e.g.*, credit score, ''in file'' credit report,[5] merged credit report)? To what extent are credit scores, as opposed to ''in file'' or merged credit reports, relied on by creditors in making decisions regarding the extension of credit? To what extent do creditors rely on two or more types of consumer reports (*e.g.*, a credit score, an ''in file'' credit report, and/or a merged credit report) in their decisions on whether to extend credit? Does the form in which the credit file information is revealed to creditors differ significantly among creditors? If so, how?

b. How frequently are multiple ''in files'' and/or multiple credit scores received in response to a request for information on a single individual? How are multiple ''in files'' and/or multiple credit scores treated by parties in their credit granting decisions?

c. Does the creditor use all of the information that it receives in response to a request for information on an individual, or, in certain situations, does it use only a subset of that information? For example, if a reseller or a creditor receives multiple ''in files'' does the creditor rely on all of the ''in files'' in making its credit granting decision, or does it screen the ''in files'' to determine which files it will rely on in making its decision? What are the situations in which the creditor relies on a subset of the information in its credit granting decision?

d. Are credit scores based on more information than that which appears in a file that is disclosed to consumers? For example, is information used that is blocked or suppressed from the consumer's file?

e. Do consumers ever receive multiple file disclosures in response to their request to see their credit file? If so, how often does this occur?

f. What factors account for the differences in the consumer report that is relied on by a creditor versus the credit report that is seen by a consumer who requests a credit report after receiving an adverse action notice? In particular, are there differences due to (i) differences in the time at which the credit report is requested, (ii) differences in the format in which a credit report is presented to a consumer versus a creditor, or (iii) differences in the identifying information that is used to request a credit report? Are there differences due to the matching technologies used to respond to requests for information by the consumer versus the user of a consumer report? If the same identifying information was used by the creditor and the consumer to request a credit file and if the requests were placed at the same time, could the creditor receive multiple ''in files'' while the consumer only receives one file? Are there differences due to other factors? If so, what are these factors and why do they result in different credit reports being relied on by the creditor

[5] The term ''in file'' credit report refers to a set of information that a party (*e.g.*, creditor or reseller) receives from a credit reporting agency in response to a request for information about an individual.

versus the consumer? Please describe in detail the source of any differences.

g. What information do consumer reporting agencies require consumers to provide to obtain a copy of their credit report? What information do consumer reporting agencies require creditors to provide to obtain information on an individual? To the extent that there are differences in the credit report seen by the creditor versus the consumer due to differences in identifying information, are these differences due to (i) differences in the amount of information that is required (*e.g.*, a creditor is not required to provide the middle name of the individual, but the consumer is required to provide a middle name), (ii) differences in the completeness of the information (*e.g.*, the consumer reports his name as John Doe, Jr., but the creditor reports only John Doe), (iii) typographical errors (*e.g.*, social security number or name is typed in incorrectly by the creditor), or (iv) something else? Please describe in detail the source of any differences, as well as the extent to which they occur.

2. What current problems exist when the consumer receives a report that is different in form or content from the report relied on by the creditor? Please provide examples of specific situations in which consumers would benefit from the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action.

a. Do the problems arise primarily from differences in the scope of the information seen by the creditor versus the consumer, differences due to the time at which the report is requested, or both? For example, are the concerns related to situations in which a consumer does not know what information led to the adverse action because the information is already corrected by the time the report is normally seen by the consumer? Or, is it more likely that any problems come from a situation where the creditor has information in a consumer report or in multiple ''in files'' that actually pertains to another individual?

b. Would the proposed requirement increase the ability of consumers to identify errors in their credit reports? If so, how?

c. Would the proposed requirement aid consumers who seek to have the adverse action decision reversed because of inaccuracies or incomplete information in the credit report relied on by the creditor?

d. Would the proposed requirement aid consumers who seek to obtain credit from other parties following an adverse action?

e. Would the proposed requirement increase the ability of consumers to identify identity theft and/or remove fraudulent information from their credit report? If so, how?

f. Is the proposed requirement, in and of itself, sufficient to generate the benefits noted above, or are other requirements also necessary (*e.g.*, credit report must be provided by a certain party at a certain time in the credit granting decision process) in order for the benefits to be generated? If so, what additional requirements are necessary?

g. Would the proposed requirement generate benefits other than those noted above? If so, what benefits would likely be generated?

3. What information would consumers gain if they receive the same credit report that the creditor relied on in taking the adverse action?

a. Is there any information that appears in the report that the creditor relied on that is not currently reported to consumers, that, if corrected or deleted, would improve the consumer's ability to obtain credit?

b. Is there any information that appears in the report that the creditor relied on that is not currently reported to consumers that would enable the consumer to detect if he/she is a victim of identity theft, or if he/she continues to be a victim of identity theft?

c. Is there information that appears in the report that the creditor relied on that is not currently reported to consumers that generates benefits other than those noted above? If so, what additional information generates the benefits and what are the benefits?

4. Are there situations in which the consumer already has an opportunity to see a copy of the credit report that the creditor is relying on prior to the creditor taking an adverse action? In particular, what is the extent to which this situation occurs in the mortgage industry?

5. Are there situations in which the consumer already receives a copy of the credit report that the creditor relied on in taking the adverse action, after the action is taken? In particular, what is the extent to which this situation occurs in the mortgage industry?

B. The Cost of Implementing the Proposed Requirement

1. What are the various means by which the proposed requirement that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action could be implemented? What would be the costs associated with implementing the proposed requirement via these various means? Which party (creditor versus the consumer reporting agency) can provide the same report that the creditor relied on in taking the adverse action to consumers at least cost?

2. Why do consumer reporting agencies not currently give consumers a copy of the same credit report that the creditor relied on in taking the adverse action? What would be the costs to consumer reporting agencies of requiring them to do so?

a. Is the data base that is maintained by a consumer reporting agency kept in such a way that the consumer reporting agency can easily reconstruct a credit report from a prior date? If not, what would be the cost associated with requiring a change that would enable the consumer reporting agency to do that?

b. Would a consumer reporting agency know what information is drawn from a credit file by a creditor and the manner in which it is displayed to them? If not, how costly would it be for the consumer reporting agency to obtain this information?

c. Are there situations in which the cost of requiring the consumer reporting agency to provide a copy of the same credit report that the creditor relied on in taking the adverse action to a consumer who has experienced an adverse action would be minimal and/or nonexistent? If so, what are these situations?

3. Why do creditors not currently give consumers a copy of the same credit report that the creditor relied on in taking the adverse action? What would be the costs to creditors of requiring them to do so? Does the cost vary depending on the credit granting situation (*e.g.*, mortgages versus instant credit)? Are there situations in which the cost of requiring the creditor to provide a copy of the same credit report that they relied on in taking the adverse action to a consumer who has experienced an adverse action would be minimal and/or nonexistent? If so, what are these situations?

4. What would be the cost to consumers associated with obtaining a copy of the credit report that the creditor relied on in taking the adverse action in addition to or in lieu of the credit report that the consumer currently receives if he or she requests one after receiving an adverse action notice?

a. Would the proposed requirement lead consumers to mistakenly conclude that there are inaccuracies in their credit reports? Would giving consumers an

older version lead them to dispute inaccuracies that may have already been corrected? What sort of costs might result from these disputes?

b. Would the proposed requirement make it more difficult for consumers to determine if there are inaccuracies in their credit report? Are there situations where a consumer who views the version that the creditor has relied on might miss the opportunity to fix inaccurate information that appears on the report after it was requested by the creditor? What sort of costs (*e.g.*, denial of future credit) might result from these situations?

c. What would be the cost to creditors associated with retooling their credit granting process to produce consumer friendly versions of the consumer report that they relied on?

d. Would the proposed requirement make it more difficult for consumers to determine if they are, or continue to be, a victim of identity theft? If so, why?

e. Could the proposed requirement unintentionally increase identity theft, particularly in situations where credit is denied because identity theft is suspected or in situations in which multiple ''in files'' or scores are received by the creditor in response to a request for information on a single individual?

f. Could the proposed requirement raise privacy concerns in situations in which multiple ''in files'' or scores are received by the creditor in response to a request for information on a single individual?

C. Additional Information

1. Do the experiences of other countries (*e.g.*, Sweden) that have a similar, but not identical requirement that consumers receive the same report as that relied on by the creditor, inform our analysis here?

2. Do the FCRA's section 604 requirements regarding adverse action in employment, where the consumer already receives a copy of the same consumer report that the party taking the adverse action relied on inform our analysis here?

3. What other additional information should the Commission consider in studying the effects of the proposed requirement?

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Comments must be received on or before July 16, 2004. Comments should refer to ''FACT Act Section 318(a)(2)(C) Study, Matter No. P044804'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [6] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *FACTAStudy@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–13482 Filed 6–14–04; 8:45 am]

BILLING CODE 6750–01–P

[6] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–62]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e–mail to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

2005 National Health Interview Survey, OMB No. 0920–0214—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Respondents to the NHIS also serve as the sampling frame for the Medical Expenditure Panel Survey which is conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and access to health care. Journalists use its data to inform the general public. It will continue to be a leading source of data for the

Congressional-mandated ''Health US'' and related publications. NHIS is the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2010.''

The NHIS has been in the field continuously since 1957. Due to survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a shift from paper questionnaires to computer assisted personal interviews (CAPI). These redesigned elements were fully implemented in 1997. This clearance is for the ninth full year of data collection using the core questionnaire on CAPI, and for the implementation of a supplement sponsored by the National Cancer Institute. There is no cost to the respondents other than their time.

Annualized Burden Table:

[January–December 2005]

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Family	39,000	1	21/60	13,650
Sample adult	32,000	1	42/60	22,400
Sample child	13,000	1	15/60	3,250
Total				39,300

Dated: June 7, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13337 Filed 6–14–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Dermatologic and Ophthalmic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 12, 2004, from 8 a.m. to 5:30 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery: 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6801, e-mail: *topperk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512534 or 3014512535. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–701, proposed tradename TAZORAL (oral tazarotene) 1.5 milligram (mg) and 4.5 mg capsules, Allergan, Inc., proposed for the treatment of moderate to severe psoriasis, including risk management options to prevent fetal exposure.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 2, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 2, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 7, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–13428 Filed 6–14–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 14, 2004, from 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for

express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6758, FAX: 301–827–6776, or e-mail: *PerezT@cder.fda.gov*. Please call the FDA Advisory Information Line at 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512538, for up-to-date information on this meeting.

Agenda: The committee will discuss the efficacy and safety of new drug application (NDA) #21–200, ZELNORM (tegaserod maleate), for the proposed indication of the treatment of patients with chronic constipation and relief of associated symptoms of straining, hard or lumpy stools, and infrequent defecation.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 6, 2004. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 6, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas H. Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 7, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–13430 Filed 6–14–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0258]

Produce Safety From Production to Consumption: An Action Plan to Minimize Foodborne Illness Associated With Fresh Produce; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to elicit information from stakeholders concerning key elements of FDA's new produce safety action plan entitled ''Produce Safety From Production to Consumption: An Action Plan to Minimize Foodborne Illness Associated With Fresh Produce.'' The new produce safety action plan will be forthcoming and posted at *http://www.foodsafety.gov/~dms/fs-toc.html* prior to the public meeting. We request that those who speak at the meeting or otherwise provide FDA with their comments focus on the questions set out in section II of this document concerning the draft of the produce safety action plan.

DATES: The public meeting will be held in College Park, MD, on Tuesday, June 29, 2004, from 1 p.m. to 4 p.m. We request that all those planning to attend the meeting register prior to the meeting. For security reasons and due to space limitations, we recommend that you register at least 5 days prior to the meeting. You may register via the Internet and also by fax until close of business 5 days before the meeting, provided that space is available (see **FOR FURTHER INFORMATION CONTACT**). In addition to participating at the public meeting, you may submit written or electronic comments until July 24, 2004.

ADDRESSES: The public meeting on Tuesday, June 29, 2004, will be held at the Harvey W. Wiley Federal Bldg., FDA, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Amy L. Green, Center for Food Safety and Applied Nutrition (HFS–306), FDA, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2025, FAX: 301–436–2651, or e-mail: *amy.green@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1997, the Produce and Imported Food Safety Initiative (PIFSI) was released, which brought increased attention and resources to produce and microbial food safety. In 1998, as a part of this initiative, FDA issued guidance on good agricultural practices (GAPs) and the good manufacturing practice regulations (GMPs) for fresh produce. This guidance entitled ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' (1998 guidance or 1998 GAPs/GMPs guidance), is broad in scope and covers all fresh produce consumed in the United States that is produced domestically and abroad and practices commonly involved in the production and packing of fresh produce. The 1998 GAPs/GMPs guidance has been well received and widely adopted; however, foodborne illness outbreaks associated with fresh produce continue to occur.

The draft 2004 produce safety action plan continues the 1997 initiative, building on experience from earlier efforts such as the development and implementation of the 1998 GAPs/GMPs guidance, inspections of farms and produce packing facilities, and investigations of foodborne illness outbreaks. The draft of the 2004 produce action plan addresses all principal points between the farm and table where contamination of produce could occur. It covers fresh fruit and vegetables in their native form and raw, minimally processed products, i.e., raw, pre-cut, or fresh-cut fruits and vegetables that have received some processing to alter their form (such as peeling, slicing, chopping, shredding, coring, trimming, or mashing), but have not been subject to a thermal process that would reduce, control, or eliminate microbial hazards. The draft action plan is not intended to cover processed products such as juice, or agricultural products other than fruits and vegetables, such as tree nuts.

In the 7 years since PIFSI began, many changes have occurred in the industry and much new knowledge and information are available. FDA believes that a good first step in moving the produce safety action plan forward is to engage and solicit the views of other Government agencies at Federal, State, and local levels, from industry groups, and from the public generally. The public meeting and comment period are intended to provide that opportunity.

FDA has drafted the set of questions below to help focus comments presented at the public meeting or otherwise communicated to the agency.

II. Questions

1. What concepts or underlying principles should guide the 2004 Produce Safety Action Plan? Are the seven objectives in the working draft appropriate for achieving the overarching goal to minimize foodborne illness associated with the consumption of fresh produce?

2. What major practices contribute to the contamination of fresh produce by harmful pathogens? What intervention strategies will prevent, reduce, or control this contamination?

3. The produce action plan covers fresh fruits and vegetables that have not been heat treated to reduce, control, or eliminate pathogens, or otherwise significantly processed. The draft action plan is not intended to cover frozen fruits and vegetables, fruit and vegetable juices, or other commodities such as tree nuts that are neither fruits nor vegetables and not typically regarded as produce. Should the produce action plan cover additional foods? If so, which foods?

4. What measurements should be used to measure progress toward the overarching goal (to minimize foodborne illness associated with fresh produce consumption)? What measures should be used to measure progress toward the individual objectives?

5. Does FDA's current GAPs/GMPs guidance (*http://www.foodsafety.gov/~dms/prodguid.html*) need to be expanded or otherwise revised? If yes, please describe generally the areas that need expansion or other revision.

6. In today's production and food preparation environments (farms, packing houses, retail establishments, and consumers), what conditions, practices, or other factors are the principal contributors to contamination of produce with a pathogen? What interventions would reduce, control, or eliminate this contamination?

7. There is broad variation within food operations including variations in size of establishments, the nature of the commodity produced, the practices used in production, and the vulnerability of a particular commodity to microbial hazards. How, if at all, should the produce action plan be structured to take into account such variation? For example, should there be different sets of interventions for identifiable segments of the fresh produce industry?

8. What roles can and should Federal, State, and local agencies and the food industry play in developing and implementing action items to help achieve the objectives in this action plan?

9. Are there existing food safety systems or standards (such as international standards) that FDA should consider as part of the agency's development and implementation of a produce safety action plan? Please identify these systems or standards and explain what their consideration might contribute to this effort.

III. Registration

You may register through FDA's Web site *http://www.cfsan.fda.gov/* and choose ''Public Meetings,'' by fax, or e-mail (see **FOR FURTHER INFORMATION CONTACT**). For security reasons and due to space limitations, we recommend that you register at least 5 days prior to the meeting. Registration will be accepted on a first-come-first-serve basis. You may register until close of business June 22, 2004. If you need special accommodations due to a disability, please inform the contact person at least 7 days in advance (see **FOR FURTHER INFORMATION CONTACT**). There is no registration fee for this public meeting, but early registration is encouraged because space is limited, and it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number, if known, on your registration form. Because the meeting will be held in a Federal building, you should also bring a photo identification (ID) and plan for adequate time to pass through security screening systems. If you would like to make oral comments at the meeting, please specify your interest in speaking when you register. The amount of time for each oral presentation may be limited based upon the number of requests to speak. FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record.

IV. Transcripts

A transcript will be made of the proceedings of the meeting. You may request a copy of the meeting transcript from FDA's Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 30 working days after the meeting at a cost of 10 cents a page. The transcript of the public meeting and all comments submitted will be available for public examination at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Comments

In addition to presenting oral comments at the public meeting, interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the subject of this meeting. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13544 Filed 6–10–04; 1:35 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Reach Out Now National Teach-In Initiative Feedback Form

(OMB No. 0930–0258; Extension, no change)—Under section 515(b) of the Public Health Service Act (42 U.S.C. 290bb-21), the Center for Substance Abuse Prevention (CSAP) of the Substance Abuse and Mental Health Services Administration (SAMHSA) is directed to develop effective alcohol abuse prevention literature and, to assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems. Each April, SAMHSA collaborates with Scholastic Inc. in the April distribution of *Reach Out Now: Talk to Your Fifth Grader About Underage Alcohol Use,* a supplement created and distributed by Scholastic Inc.

Beginning in April 2004, SAMHSA sponsors an annual national Teach-In to foster a conversation with fifth graders on the dangers of early alcohol use. State substance abuse prevention directors nominate organizations to participate in this program. The Teach-In program builds upon the highly successful national initiative of the Leadership to Keep Children Alcohol Free, which is focused on preventing alcohol use among children ages 9 to 15 and is spearheaded by more than 40 current and past Governors' spouses, who have held or supported Reach Out Now Teach-Ins in their States.

Organizations that agree to participate in this SAMHSA initiative are asked to provide feedback information about the implementation and results of the Teach-In event in their community school. The table that follows provides an estimate of the annual response burden for the feedback form.

Number of respondents	Responses/respondent	Burden/response (hrs.)	Total burden hours
200	1	.167	34

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received by August 16, 2004.

Dated: June 7, 2004.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–13395 Filed 6–14–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: EMI Independent Study Course Enrollment Application.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0046.

Form: FEMA Form 95–23.

Abstract: The purpose of this form is to collect information from individuals on what Independent Study courses they wish to enroll in. This form lists the courses available through FEMA's Independent Study Program and collects information from individuals so that these courses can be mailed to them.

Affected Public: Individuals or households.

Number of Respondents: 187,000.

Estimated Time per Respondent: 1 minute or .016666 hour.

Estimated Total Annual Burden Hours: 3,116 hours.

Frequency of Response: Other—As needed for participants to enroll in Independent Study courses.

Cost to Respondents: Annualized cost to all respondents is estimated at $81,937. This figure is composed of two items: $54,261 corresponding to the time spent completing the form at the national mean hourly rate of $17.41 and $27,676 comprising the cost of a regular postage stamp of $0.37 for 74,800 respondents (40% of applications) who chose to apply via mail.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Emergency Preparedness and Response Directorate/Federal Emergency Management Agency, Department of Homeland Security, 725 17th Street, NW., Docket Library Room 10102, Washington, DC 20503. Comments must be submitted on or before July 15, 2004. In addition, interested persons may also send comments to FEMA (see contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: June 2, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–13456 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management

and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Request for Federal Assistance—How to Process Mission Assignments in Federal Disaster Operations.

OMB Number: 1660–0047.

FEMA Form(s): FEMA Form 90–129, Mission Assignment (MA), FEMA Form 90–136, Action Request (ARF).

Abstract: FEMA Form 990–129, Mission Assignment, is used by FEMA to record a request for Federal assistance by States and may become the official FEMA obligating document if a mission assignment to another Federal agency results from the request. States may use FEMA Form 90–136 to submit a written request for Federal assistance may be submitted on an Action Request Form (ARF). Mission Assignments are directives provided by FEMA to another agency to perform specific work in disaster operations, on a reimbursable basis and are defined in the 44 Code of Federal Regulations, 206.2(a)18 and to record State and Federal approving signatures.

Affected Public: State, local or tribal government.

Number of Respondents: 56.

Estimated Time per Respondent: FEMA Form 90–129, 1 minute or .016666 hour; FEMA Form 90–136, 20 minutes or .33333 hour; and 8 hours for training State Representatives.

Estimated Total Annual Burden Hours: 1,672 hours.

Frequency of Response: On Occasion.

Cost to Respondents: Annualized cost to all respondents is estimated at $35,045. This cost is based on the hourly wage rate of $20.96 per respondent.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for Emergency Preparedness and Response Directorate/Federal Emergency Management Agency, Department of Homeland Security, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments must be submitted on or before July 15, 2004. In addition, interested persons may also send comments to FEMA (see contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: June 2, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–13457 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 3, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms, tornadoes, and flooding beginning on May 27, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Crawford, Clark, Marion, Miami, and Washington Counties for Individual Assistance.

Crawford, Clark, Marion, Miami, and Washington Counties in the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13464 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1518–DR]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1518–DR), dated May 25, 2004, and related determinations.

EFFECTIVE DATE: June 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2004:

Adair, Adams, Allamakee, Audubon, Benton, Black Hawk, Boone, Buena Vista, Calhoun, Cedar, Chickasaw, Clay, Clinton, Dallas, Dubuque, Floyd, Franklin, Greene, Grundy, Guthrie, Hardin, Howard, Iowa, Jackson, Jasper, Johnson, Kossuth, Madison, Marshall, Montgomery, Palo Alto, Polk, Pottawattamie, Poweshiek, Sac, Shelby, Story, Tama, Warren, Webster, Winnebago, Winneshiek, Worth, and Wright Counties for Individual Assistance.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

[FR Doc. 04–13461 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1518–DR]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1518–DR), dated May 25, 2004, and related determinations.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2004:

Buchanan, Cerro Gordo, and Mitchell Counties for Categories C–G under the Public Assistance program (already designated for Individual Assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.)

Black Hawk, Dallas, Marshall, Story, Tama, Winnebago, and Worth Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13462 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1511–DR]

Federated States of Micronesia; Amendment No. 4 to Notice of a Major Disaster Declaration; Correction

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: The Federal Emergency Management Agency published a document in the **Federal Register** of May 14, 2004, concerning the Federated States of Micronesia; Amendment No. 4 to Notice of a Major Disaster Declaration. The document did not contain a full explanation of the assistance available to Yap State.

EFFECTIVE DATE: May 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

Correction

In the **Federal Register** of May 14, 2004, in FR Doc. 04–10936, on page 26876, in the second and third columns, correct the **SUPPLEMENTARY INFORMATION** caption to read:

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 10, 2004:

This designation of Individual Assistance does not include the entire Yap State but only the island of Yap proper within Yap State. Emergency Food Assistance will continue for the islands of Fais and Ulithi Atoll.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13458 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1517–DR]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1517–DR), dated May 25, 2004, and related determinations.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2004:

Buffalo, Butler, Douglas, Fillmore, Franklin, Hall, Hamilton, Johnson, Kearney, Nuckolls, Otoe, Pawnee, Sarpy, Saunders, and Seward Counties for Individual Assistance.

Adams, Clay, Dodge, Jefferson, Thayer, Washington, Webster, and York Counties for Individual Assistance and Public Assistance.

Cass, Gage, Lancaster, and Saline Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance, and debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program).

Blaine, Boone, and Cuming Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13459 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1517–DR]

Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA–1517–DR), dated May 25, 2004, and related determinations.

EFFECTIVE DATE: June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 1, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13460 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1519–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1519–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 3, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding beginning on May 18, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing

Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Brad Gair, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Athens, Columbiana, Cuyahoga, Lorain, Medina, Noble, Perry, and Summit Counties for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–13463 Filed 6–14–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–08]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Affordable Communities Initiative

AGENCY: Office of the General Counsel.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Mark D. Menchik, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *Mark_D._Menchik@omb.eop.gov*. Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency review and processing under the Paperwork Reduction Act, an information collection package with respect to HUD's Affordable Communities Award, a non-monetary award designed to acknowledge and honor those jurisdictions or communities that are expanding affordable housing opportunities by reducing regulatory barriers and creating an environment supportive of the construction and rehabilitation of affordable housing.

In June 2003, HUD announced a new initiative, America's Affordable Communities Initiative (Initiative). The Initiative focuses on breaking down regulatory barriers that impede the production or rehabilitation of affordable housing. As part of this initiative, HUD is examining federal, state and local regulations to identify those regulations that present significant barriers to the production or rehabilitation of affordable housing. HUD is currently reviewing its own regulations to identify regulatory barriers to affordable housing that HUD can and should change. HUD's intention is to lead by example. Another effort of the Initiative includes providing incentives to state and local governments to remove regulatory barriers. As part of HUD's FY2004 SuperNOFA, HUD included, as a policy priority, the removal of regulatory barriers. An applicant that meets the criteria of a policy priority is eligible to receive higher points. The removal of regulatory barriers will not only be a policy priority in HUD's FY2004 SuperNOFA but in other FY2004 NOFAs published independently from the SuperNOFA.

This non-monetary award announcement is designed to present an additional incentive to states, local, and tribal governments to become active in removing barriers to affordable housing to the extent feasible. This award will serve to publicly recognize jurisdictions or communities that have taken a leadership role in reexamining their existing regulatory systems and have taken the necessary steps to promote the construction and development of affordable housing.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Affordable Communities Award.

Office: Office of the General Counsel.

OMB Control Number: 2510—

Description of the need for the information and proposed use:

The information presented by applicants for the award will be used to select the award winners. The information presented by the applicants also should provide the Initiative with good examples of how regulatory barriers are removed and affordable housing made possible or increased in communities across America.

Form Number: No form number.

Members of affected public: States and local jurisdictions (cities, counties and towns, townships and incorporated municipalities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	x	Frequency of response	=	Hours per response	=	Burden hours
300		1		8		2,400

Total Estimated Burden Hours: 2,400.
Status: New.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 10, 2004.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 04–13432 Filed 6–14–04; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–09]

Notice of Submission of Proposed Information Collection to OMB; Affordable Communities Initiative

AGENCY: Office of the General Counsel.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Mark D. Menchik, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *Mark_D._Menchik@omb.eop.gov*. Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB for review and processing under the Paperwork Reduction Act an information collection package with respect to HUD's Affordable Communities Award, a non-monetary award designed to acknowledge and honor those jurisdictions or communities that are expanding affordable housing opportunities by reducing regulatory barriers and creating an environment supportive of the construction and rehabilitation of affordable housing.

In June 2003, HUD announced a new initiative, America's Affordable Communities Initiative (Initiative). The Initiative focuses on breaking down regulatory barriers that impede the production or rehabilitation of affordable housing. As part of this initiative, HUD is examining federal, state and local regulations to identify those regulations that present significant barriers to the production or rehabilitation of affordable housing. HUD is currently reviewing its own regulations to identify regulatory barriers to affordable housing that HUD can and should change. HUD's intention is to lead by example. Another effort of the Initiative includes providing incentives to state and local governments to remove regulatory barriers. As part of HUD's FY2004 SuperNOFA, HUD included, as a policy priority, the removal of regulatory barriers. An applicant that meets the criteria of a policy priority is eligible to receive higher points. The removal of regulatory barriers will not only be a policy priority in HUD's FY2004 SuperNOFA but in other FY2004 NOFAs published independently from the SuperNOFA.

This non-monetary award announcement is designed to present an additional incentive to states, local, and tribal governments to become active in removing barriers to affordable housing to the extent feasible. This award will serve to publicly recognize jurisdictions or communities that have taken a leadership role in reexamining their existing regulatory systems and have taken the necessary steps to promote the construction and development of affordable housing.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Affordable Communities Award.

Office: Office of the General Counsel.

OMB Control Number: 2510—

Description of the need for the information and proposed use:

The information presented by applicants for the award will be used to select the award winners. The information presented by the applicants also should provide the Initiative with good examples of how regulatory barriers are removed and affordable housing made possible or increased in communities across America.

Form Number: No form number.

Members of affected public: States and local jurisdictions (cities, counties and towns, townships and incorporated municipalities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	×	Frequency of response	=	Hours per response	=	Burden Hours
300		1		8		2,400

Total Estimated Burden Hours: 2,400.
Status: New.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 10, 2004.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 04–13434 Filed 6–14–04; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1056 (Final)]

Certain Aluminum Plate From South Africa

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1056 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from South Africa of certain aluminum plate, provided for in subheading 7606.12.30 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult 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).

EFFECTIVE DATE: May 21, 2004.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), 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:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain aluminum plate from South Africa are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 16, 2003, by Alcoa, Inc. Pittsburgh, PA.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on September 21, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 5, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 27, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 29, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 28, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 12, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 12, 2004. On October 29, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 2, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "6000 series aluminum alloy, flat surface, rolled plate, whether in coils or cut-to-length forms, that is rectangular in cross section with or without rounded corners and with a thickness of not less than .250 inches (6.3 millimeters). 6000 Series Aluminum Rolled Plate is defined by the Aluminum Association, Inc. Excluded from the scope of this investigation are extruded aluminum products and tread plate."

rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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: June 8, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13359 Filed 6–14–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–460]

Foundry Products: Competitive Conditions in the U.S. Market

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: June 8, 2004.

SUMMARY: Following receipt on May 4, 2004 of a request from the U.S. House Committee on Ways and Means under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–460, Foundry Products: Competitive Conditions in the U.S. Market.

FOR FURTHER INFORMATION CONTACT:

(1) Project Leader, Judith-Anne Webster (202–205–3489 or *judith-anne.webster@usitc.gov*)

(2) Deputy Project Leader, Deborah McNay (202–205–3425 or *deborah.mcnay@usitc.gov*)

The above persons are in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *william.gearhart@usitc.gov.* Media should contact Peg O'Laughlin at 202–205–1819 or *margaret.olaughlin@usitc.gov.* General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background: As requested by the Committee, the Commission will investigate the current competitive conditions facing producers in the U.S. foundry industry in the U.S. market. The investigation will include an overview of the industry together with a detailed analysis of selected key iron-, steel-, aluminum-, and copper-based cast products which are representative of the major segments of the foundry industry. The Commission's report will provide information for the most recent five-year period, to the extent possible, regarding the following:

1. A profile of the U.S. foundry industry.
2. Trends in U.S. production, shipments, capacity, consumption, and trade in foundry products, as well as financial conditions of domestic producers.
3. A profile of major foreign industries including, but not necessarily limited to, Brazil and China.
4. A description of relevant U.S. and foreign government policies and regulations affecting U.S. and foreign producers as identified during the investigation by the producers and consumers of foundry products, including appropriate investment, tax, and export policies; environmental regulations; and worker health and safety regulations.
5. A comparison of various factors affecting competition between U.S. and foreign producers-such as the availability and cost of raw materials, energy, and labor; level of technology and changes in the manufacturing process; pricing practices; transportation costs; technical advice and service; and an analysis of how these factors affect the industry.
6. An analysis of the purchasing patterns and practices of downstream industries. As requested by the Committee, the Commission will provide its report not later than May 4, 2005.

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on October 14, 2004, at the U.S. International Trade Commission Building, 500 E Street, SW, Washington, DC. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., September 24, 2004, in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on September 24, 2004, no witnesses are scheduled to appear, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202-205–2000) after September 24, 2004, to determine whether the hearing will be held.

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning this investigation in accordance with the requirements in the ''Submissions'' section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., September 30, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 22, 2004.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submission that contains confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In their hearing testimony and written submissions, interested parties should provide information regarding the six topics in the ''Background'' section of this notice and any other relevant information relating to competitive conditions in the U.S. foundry market.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic

means, except to the extent permitted by section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

List of Subjects

Foundry, metal castings, and competition.

By order of the Commission.

Issued: June 8, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13358 Filed 6–14–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 009–2004]

Privacy Act of 1974; Systems of Records

AGENCY: United States Trustee Program, Department of Justice.

ACTION: Notice of modifications to systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, the United States Trustee Program (''USTP''), Department of Justice, proposes to modify the following existing Privacy Act systems of record, which were last substantively revised on March 4, 2004, at 69 FR 10255:

JUSTICE/UST–001, Bankruptcy Case Files and Associated Records;
JUSTICE/UST–002, Bankruptcy Trustee Oversight Records;
JUSTICE/UST–003, U.S. Trustee Program Timekeeping Records; and
JUSTICE/UST–004, U.S. Trustee Program Case Referral System.

DATES: These actions will be effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: For information regarding these changes, and for general information regarding USTP's Privacy Act systems, contact Anthony J. Ciccone, FOIA/Privacy Counsel, Executive Office for United States Trustees, at (202) 307–1399.

SUPPLEMENTARY INFORMATION: Two new routine uses are being added to the following United States Trustee Program systems of records. They state that information from USTP systems may be disclosed in connection with investigations and/or meetings under 11 U.S.C. 341, so as to facilitate USTP civil and criminal enforcement efforts and compliance with the Bankruptcy Code and related authority.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit comments by July 15, 2004. The public, OMB, and Congress are invited to submit comments to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Ave., NW., Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress.

Dated: June 8, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/UST–001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(N) Release of Information related to Investigations and Proceedings:

Information from these records may be disclosed in the course of investigating the potential or actual violation of any law—whether civil, criminal, or regulatory in nature—or for the preparation of a trial or hearing for such violation. Such information may be disclosed to a federal, state, local, tribal, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing, and if the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(O) Release of Information in connection with Section 341 Meetings:

Information from these records may be disclosed in connection with meetings held under 11 U.S.C. 341 and related proceedings, when the Department of Justice determines that the records are arguably relevant to such meetings or bankruptcy proceedings. Transcripts or other records of such meetings may also be disclosed upon request pursuant to relevant bankruptcy laws or rules.

JUSTICE/UST–002

SYSTEM NAME:

Bankruptcy Trustee Oversight Records

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(M) Release of Information related to Investigations and Proceedings:

Information from these records may be disclosed in the course of investigating the potential or actual violation of any law—whether civil, criminal, or regulatory in nature—or for the preparation of a trial or hearing for such violation. Such information may be disclosed to a federal, state, local, tribal, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing, and if the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(N) Release of Information in connection with Section 341 Meetings:

Information from these records may be disclosed in connection with meetings held under 11 U.S.C. 341 and related proceedings, when the Department of Justice determines that the records are arguably relevant to such meetings or proceedings. Transcripts or other records of such meetings may also be disclosed upon request pursuant to relevant bankruptcy laws or rules.

JUSTICE/UST–003

1. SYSTEM NAME:

U.S. Trustee Program Timekeeping Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(F) Release of Information related to Investigations and Proceedings:

Information from these records may be disclosed in the course of investigating the potential or actual violation of any law—whether civil, criminal, or regulatory in nature—or for the preparation of a trial or hearing for such violation. Such information may be disclosed to a federal, state, local, tribal, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing, and if the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

JUSTICE/UST–004

1. SYSTEM NAME:

U.S. Trustee Program Case Referral System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(N) Release of Information related to Investigations and Proceedings:

Information from these records may be disclosed in the course of investigating the potential or actual violation of any law—whether civil, criminal, or regulatory in nature—or for the preparation of a trial or hearing for such violation. Such information may be disclosed to a federal, state, local, tribal, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing, and if the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(O) Release of Information in connection with Section 341 Meetings:

Information from these records may be disclosed in connection with meetings held under 11 U.S.C. 341 and related proceedings, when the Department of Justice determines that the records are arguably relevant to such meetings or proceedings. Transcripts or other records of such meetings may also be disclosed upon request pursuant to relevant bankruptcy laws or rules.

[FR Doc. 04–13450 Filed 6–14–04; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Letter Application To Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 42, on page 10063, on March 3, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 15, 2004. This process is conducted in accordance with 5 CFR 1320.10.

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 Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle or a Nonsporting Shotgun for the Purpose of Testing.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The information is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 5 respondents, who will complete a written letter within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 28, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–13421 Filed 6–14–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application For Tax Exempt Transfer and Registration of Firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 16, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Tax Exempt Transfer and Registration of Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5 (5320.5). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households and State, Local, or Tribal Government. ATF F 5 (5320.5) is used to apply for permission to transfer a National Firearms Act (NFA) firearm exempt from transfer tax based on statutory exemptions. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 7,888 respondents will complete a 4 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 379,896 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–13423 Filed 6–14–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application For Tax Paid Transfer and Registration of Firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 16, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Tax Paid Transfer and Registration of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4 (5320.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-

profit. Other: Individual or households. ATF F 4 (5320.4) is required to apply for the transfer and registration of a National Firearms Act (NFA) firearm. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,065 respondents will complete a 4 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 44,260 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–13424 Filed 6–14–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alcan, Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC; Complaint, Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Amended Final Judgment, Amended Hold Separate Stipulation and Order, and Revised Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Alcan, Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC,* No. 1:03 CV 02012 (GK).

On September 29, 2003, the United States filed a Complaint alleging that Alcan's proposed acquisition of Pechiney would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in development, production, and sale of brazing sheet in North America. Brazing sheet is an aluminum alloy used to make heat exchangers (*e.g.,* radiators, heaters, and air conditioners) for motor vehicles. The initial proposed Final Judgment, filed along with the Complaint, required the defendants to divest Pechiney's brazing sheet business to a person acceptable to the United States within 120 days after Alcan received notice from the responsible French regulatory authority that its tender offer for Pechiney had been successful.

On May 26, 2004, the parties filed a proposed Amended Final Judgment. The Amended Final Judgment requires the defendants to divest *either* Pechiney's *or* Alcan's brazing sheet business to a person acceptable to the United States within 180 days after the filing or five days after the Court's entry of the Amended Final Judgment, whichever is later. Copies of the Complaint, the proposed Amended Final Judgment, Amended Hold Separate Stipulation and Order, and Revised Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: (202) 514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

United States of America, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Plaintiff, v. Alcan Inc., 1188 Sherbrooke Street West, Montreal, Quebec, Canada, H3A 3G2; Alcan Aluminum Corp., 6060 Parkland Boulevard, Cleveland, OH 44124–4185; Pechiney, S.A., 7, Place Du Chancelier Adenauer, CEDEX 16–75218–Paris, France; and Pechiney Rolled Products, LLC, Rural Route 2, Ravenswood, WV 26164–9802, Defendants

[Case No. 1:03CV02012]

Judge: Gladys Kessler
Deck Type: Antitrust
Date: September 29, 2003

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against defendants, and alleges as follows:

1. In early July 2003, Alcan Inc. (''Alcan'') launched a $4.6 billion tender offer for Pechiney, S.A. (''Pechiney''), which was later endorsed by Pechiney's board of directors. The United States seeks to enjoin this proposed acquisition, which, if consummated, would result in consumers paying higher prices for brazing sheet, an alumimun alloy used in making heat exchangers for motor vehicles.

2. Alcan, through its United States subsidiary (Alcan Aluminum Corp.), and Pechiney, through its United States subsidiary (Pechiney Rolled Products, LLC), are, respectively, the second and fourth largest producers of brazing sheet in North America. Brazing sheet consists of a class of layered aluminum alloys, each of which has a unique ability to form a uniform, durable, leak-proof bond with other aluminum surfaces. Brazing sheet is widely used in fabricating the major components of heat exchangers for motor vehicles, including engine cooling (*e.g.,* radiators and oil coolers) and climate control (*e.g.,* heaters and air conditioners) systems. A combination of Alcan and Pechiney would command over 40 percent of brazing sheet sales in North America. The combined firm and one other competitor would account for over 80 percent of all brazing sheet sold in North America.

3. The proposed acquisition, if consummated, would combine Alcan, a low cost new entrant and price maverick, with Pechiney, a large industry incumbent, compromising Alcan's incentive to quickly expand its sales by reducing brazing sheet prices, and ending the intense competitive rivalry that currently exists between Alcan and Pechiney in developing, producing, and selling brazing sheet. This competition, which will intensify in the next few years as Alcan completes qualifying its brazing sheet with more customers, already has produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and terms for this material. By reducing the number of major North American producers of brazing sheet from four to three, this acquisition would substantially increase the likelihood that the combined firm will unilaterally increase, or that it and the other major competitor will tacitly or explicitly cooperate to increase, prices of brazing sheet to the detriment of consumers.

4. Unless this proposed acquisition is blocked, Alcan's acquisition of Pechiney will substantially lessen competition in

the development, production, and sale of brazing sheet and likely result in an increase in prices and a reduction in quality and innovation for brazing sheet in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

I. Jurisdiction and Venue

5. This Complaint is filed by the United States under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating section 7 of the Clayton Act, 15 U.S.C. 18.

6. Alcan and Pechiney develop, produce, and sell brazing sheet in the flow of interstate commerce. Alcan's and Pechiney's activities in developing, producing, and selling brazing sheet substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a) and 1345.

7. Alcan, Alcan Aluminum Corp., Pechiney, and Pechiney Rolled Products LLP have consented to personal jurisdiction and venue in this judicial district.

II. Defendants

8. Alcan is a Canadian corporation with its headquarters in Montreal, Quebec. Alcan Aluminum, and Alcan Subsidiary, is a Delaware corporation with its principal place of business in Cleveland, OH. Alcan is one of the world's largest fully integrated aluminum producers. Alcan mines ore from which primary aluminum is produced, and produces a very wide range of rolled aluminum products, including brazing sheet. In 2002, Alcan reported sales of about $12.5 billion. Alcan projects that its sales of brazing sheet in North America was in excess of $30 million in 2003.

9. Pechiney is a French corporation with its main office in Paris, France. A subsidiary, Pechiney Rolled Products, is a Delaware corporation with its principal place of business in Ravenswood, WV. Pechiney is also a leading integrated aluminum producer that makes a wide range of rolled aluminum products. In 2002, Pechiney reported total sales of about $11.3 billion. Its United States operations generate over $100 million in North American sales of brazing sheet.

III. The Proposed Transaction

10. In early July 2003, Alcan publicly announced a tender offer for shares of Pechiney, a transaction now valued at over $4.6 billion. The tender offer, recently endorsed by Pechiney's board of directors, is expected to be completed on November 30, 2003, and soon after, Alcan is expected to acquire a majority of the voting shares in Pechiney.

IV. Trade and Commerce

A. The Relevant Product Market

11. Brazing sheet comprises a class of custom-engineered aluminum alloys, each of which is composed of a solid metal ''core'' clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When brazing sheet is baked at the appropriate temperature, the cladding alloy will melt and form a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together.

12. Brazing sheet is ideally suited for fabricating the major components of heat exchange systems used in motor vehicles. Heat exchangers include engine cooling systems such as radiators and oil coolers and climate control systems such as heater cores and air conditioning units (*i.e.*, evaporator and condenser cores). By making the basic components of heat exchangers with brazing sheet, a parts maker can avoid the physically tedious and costly task of welding or soldering individual components, many of which have unusually intricate surfaces that form joints deep within the heat exchange unit. A parts maker instead can loosely assemble the brazed components and bake the assembly in a brazing oven. The surfaces of the components will melt, converting the entire loose assembly into a solid, leak-proof heat exchange unit.

13. Today, the major components of all heat exchangers used in motor vehicles are made of brazing sheet. Less expensive, lighter, more durable and formable than materials it replaced, brazing sheet enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In heat exchange applications, no other material matches the combination of strength, light weight, durability, formability, and corrosion resistance of brazing sheet. Because of its unique attributes, brazing sheet is the preferred material for making heat exchangers for motor vehicles.

14. A small but significant and nontransitory increase in prices for brazing sheet would not cause parts makers to switch to other materials for heat exchanger components in volumes sufficient to make such a price increase unprofitable and unsustainable. Accordingly, the development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

B. The Relevant Geographic Market

15. Alcan produces brazing sheet in an aluminum hot rolling mill in Oswego, NY, and ''slits'' or cuts finished roll stock at a cold rolling mill in Fairmont, WV. Pechiney makes brazing sheet in an aluminum hot rolling mill in Ravenswood, WV. The only other large competitor produces brazing sheet in a hot rolling mill in the United States. A much smaller rival produces brazing sheet in hot rolling mills in Canada and in Europe. Additional volumes of brazing sheet are exported to the United States from Europe. Brazing sheet exports to North America, however, account for less than eight percent of total sales. The Canadian and foreign firms, moreover, operate at or near their full production capacity.

16. Domestic parts makers prefer to purchase brazing sheet from North American sources. Foreign brazing sheet typically costs much more than, but does not outperform, brazing sheet produced in North America. Reliance on overseas sources for brazing sheet can be especially risky for domestic parts makers since foreign brazing sheet is more prone to supply interruptions and delays than brazing sheet procured from local, North American sources. Typically, when overseas demand has surged, foreign producers of brazing sheet have cut shipments to North American customers, resulting in production bottlenecks that have jeopardized North American parts makers' relationships with their customers.

17. For these reasons, North American parts makers generally restrict purchases of foreign brazing sheet imports to unique circumstances, *e.g.,* as an interim measure until one or more domestic producers have been qualified to make brazing sheet for use in an auto maker's vehicle, or for low volume heat exchanger parts for which a foreign auto maker has designed a single foreign supplier as the only qualified source for that brazing sheet material.

18. A small but significant and nontransitory increase in prices for brazing sheet in North America would cause parts makers to buy so much brazing sheet from sources outside North America that such a price increase would be unprofitable and unsustainable. Accordingly, North America is a relevant geographic market within the meaning of section 7 of the Clayton Act.

C. Anticompetitive Effects

19. There are only four significant competitors in the sale of brazing sheet in North America. Pechiney is the second largest producer with over 30 percent of sales; Alcan is the fourth largest with over 10 percent of sales. After the proposed acquisition, the combined firm and the largest U.S. producer of brazing sheet would command over 80 percent of all brazing sheet sales. Total North American sales of brazing sheet exceed $360 million annually.

20. The brazing sheet market would become substantially more concentrated if Alcan acquires Pechiney. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the post-acquisition HHI would increase by at least 600 points, resulting in a post-merger HHI of about 3600, well in excess of levels that ordinarily would raise significant antitrust concerns.

21. The proposed transaction would combine Alcan with Pechiney, and remove a low cost, aggressive, and disruptive competitor in the North American brazing sheet market. Before the announced acquisition, Alcan recently had undertaken to significantly increase its sales of brazing sheet in North America. In 2001, Alcan moved its brazing sheet operations from England to Oswego, NY, then developed new, highly proprietary aluminum rolling technology that would make a low cost producer of brazing sheet in North America. Alcan also recently has completed qualifying to provide brazing sheet to several major domestic parts makers.

22. The proposed transaction will make it more likely that the few remaining brazing sheet producers will engage in anticompetitive coordination to increase prices, reduce quality and innovation, and decrease production of brazing sheet. After the acquisition, the combined firm and its largest North American rival would share market leadership and a common incentive to pursue strategies that emphasize accommodation and do not risk provocation. The acquisition also would substantially increase the likelihood that the combined firm will unilaterally increase prices of brazing sheet to the detriment of customers for whom Pechiney and Alcan are the only firms now qualified to provide brazing sheet for those customers' requirements. The other competitors in brazing sheet sales in North America do not have the incentive or ability, individually or collectively, to effectively constrain a unilateral or cooperative exercise of market power after the acquisition.

23. Purchasers of brazing sheet have benefited from competition between Alcan and Pechiney through lower prices and improved products. Alcan's acquisition of Pechiney would eliminate substantial competition and lead to an increase in prices and reduction in innovation and quality of brazing sheet.

24. The proposed transaction, if consummated, would eliminate a significant competitor and facilitate unilateral or coordinated increases in prices, or a reduction in levels of quality and innovation, for brazing sheet.

D. Entry Unlikely To Deter a Post Acquisition Exercise of Market Power

25. Successful entry into the brazing sheet market would not be timely, likely or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction.

26. Significant barriers prevent de novo or lateral entry into the development, production, and sale of brazing sheet in North America. To produce this material, not only must a firm possess an aluminum hot rolling mill (which costs at least $80 million to construct), but also the technology and expertise to create custom-engineered aluminum alloys that perform well in the demanding operating conditions prevalent in the small heat exchangers used in motor vehicles. Even firms with the physical and technological assets to produce brazing sheet must, in order to have a significant impact, ''qualify'' with customers, *i.e.*, demonstrate that it would be a reliable producer of consistently high quality brazing sheet material. Qualification can be acquired only after the new firm has made a substantial investment in expensive alloy technology, successfully completed a series of time-consuming tests of its materials and components, and acquired actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts makers. It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York to qualify with enough customers to make a significant sales impact.

V. Violations Alleged

27. The effect of Alcan's proposed acquisition of Pechiney may be to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

28. The transaction will likely have the following anticompetitive effects, among others:

a. Competition generally in the development, production, and sale of brazing sheet in North America would be substantially lessened;

b. Actual and potential competition between Alcan and Pechiney in the development, production, and sale of brazing sheet in North America would be eliminated; and

c. Prices for brazing sheet sold in North America would likely increase and the levels of quality and innovation would likely decline.

29. Unless prevented, the acquisition of Pechiney by Alcan would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

VI. Requested Relief

30. Plaintiff requests:

a. That the proposed acquisition of Pechiney by Alcan be adjudged and decreed to be unlawful and in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding or plan, the effect of which would be to combine Pechiney with the operations of Alcan;

c. That plaintiff recover the costs of this action; and

d. That plaintiff received such other and further relief as the case requires and this Court may deem proper.

Dated: September 29, 2003.

Respectfully submitted,

For Plaintiff United States of America

R. Hewitt Pate, Assistant Attorney General, DC Bar #473598.

Deborah P. Majoras, Deputy Assistant Attorney General, DC Bar #474239.

J. Robert Kramer II, Director of Operations & Civil Enforcement, PA Bar #23963.

Maribeth Petrizzi, Chief, Litigation II Section, DC Bar #435204.

Anthony E. Harris, IL Bar #1133713.

Joseph M. Miller, DC Bar # 439965.

Carolyn L. Davis.

John B. Arnett, Sr., DC Bar #439122.

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

Appendix A— Herfindahl-Hirschman Index Calculations

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and

approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

Amended Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on September 29, 2003, and plaintiff and defendants, Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, by their respective attorney, have consented to the entry of this Amended Final Judgment without trial or adjudication of any issue of fact or law, and without this Amended Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Amended Final Judgment pending its approval by the Court;

And whereas, the essence of this Amended Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is Ordered, Adjudged and Decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Amended Final Judgment:

A. ''Acquirer'' means the entity or entities to whom defendants divest Alcan's or Pechiney's Brazing Sheet Business.

B. ''Alcan'' means defendant Alcan Inc., a Canadian corporation with its headquarters in Montreal, Canada, its successors and assigns, and its subsidiaries (including defendant Alcan Aluminum Corp.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Pechiney'' means Pechiney, S.A., a French corporation with its headquarters in Paris, France, and its successors and assigns, its subsidiaries, divisions (including Pechiney Rolled Products, LLC), groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Brazing sheet'' means a layered aluminum alloy that consists of a core clad on one or both sides with an aluminum alloy whose melting temperature is lower than that of the core material. Brazing sheet is used primarily in making components of heat exchange systems (*e.g.*, radiators, oil coolers, and air conditioning units) for motor vehicles.

E. ''Pechiney's Brazing Sheet Business'' means all assets, interests, and rights in Pechiney Rolled Products, LLC's aluminum products rolling mill located in or near Ravenswood, West Virginia 26164 (''Ravenswood Facility''), including:

1. All tangible assets of the Ravenswood Facility and the real property on which the Ravenswood Facility is situated; any facilities, wherever located, used for research, development, and engineering support for the Ravenswood Facility (''the Ravenswood Engineering Facilities''), and any real property associated with those facilities; manufacturing and sales assets relating to the Ravenswood Facility and to the Ravenswood Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Ravenswood Facility and to the Ravenswood Engineering Facilities; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Ravenswood Facility and to the Ravenswood Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Pechiney Rolled Products, LLC in connection with the operations of the Ranvenswood Facility and of the Ravenswood Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names ''Pechiney'' or any variation thereof), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Pechiney Rolled Products, LLC provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Ravenswood Facility; provided, however, that defendants may, if approved by the United States in its sole discretion, require the Acquirer to license defendants to make, have made, use, or sell outside of North America any Pechiney product or process made by or used in connection with the Ravenswood Facility; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Ravenswood Facility and of the Ravenswood Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

F. ''Alcan's Brazing Sheet Business'' means all assets, interest, and rights in Alcan Aluminum Corp.'s aluminum smelting facility and rolling mill located in or near Oswego, New York 13126 (''Oswego Facility''), including:

1. All tangible assets of the Oswego Facility and the real property on which the Oswego Facility is situated; any facilities, wherever located, used for research, development, and engineering support for the Oswego Facility (''the Oswego Engineering Facilities''), and any real property associated with those facilities; manufacturing and sales assets relating to the Oswego Facility and to the Oswego Engineering Facilities (such as Alcan's aluminum cold rolling, cutting, and slitting facility in Fairmont, West Virginia 26554), including capital equipment, vehicles, supplies, personal property, inventory, office furniture,

fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Oswego Facility and to the Oswego Engineering Facilities; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Oswego Facility and to the Oswego Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Alcan in connection with the operations of the Oswego Facility and of the Oswego Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademaks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names ''Alcan'' or any variation thereof), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Alcan provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Oswego Facility; provided, however, that defendants may, if approved by the United States in its sole discretion, require the Acquirer to license defendants to make, have made, use, or sell outside of North America any Alcan product or process made by or used in connection with the Oswego Facility; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Oswego Facility and of the Oswego Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

III Applicability

A. This Amended Final Judgment applies to Alcan and Pechiney, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Amended Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include Alcan's or Pechiney's Brazing Sheet Business, that the purchaser agrees to be bound by the provisions of this Amended Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred eighty (180) calendar days after the date of filing of this Amended Final Judgment, or five (5) days after notice of the entry of this Amended Final Judgment by the Court, whichever is later, to divest Alcan's or Pechiney's Brazing Sheet Business in a manner consistent with this Amended Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. Defendants agree to use their best efforts to divest Alcan's or Pechiney's Brazing Sheet Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Amended Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of Alcan's or Pechiney's Brazing Sheet Business, whichever is then available for sale. Defendants shall inform any person making inquiry regarding a possible purchase of Alcan's Pechiney's Brazing Sheet Business that either will be divested pursuant to this Amended Final Judgment and provide that person with a copy of this Amended Final Judgment. Defendants shall offer to furnish to all prospective Acquires, subject to customary confidentiality assurances, all information and documents relating to Alcan's or Pechiney's Brazing Sheet Business, whichever is then available for sale, customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of Alcan's or Pechiney's Brazing Sheet Business and the United States information relating to the personnel involved in the production, operation, development, and sale of Alcan's or Pechiney's Brazing Sheet Business (whichever is then available for sale) to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of the defendants' employees whose responsibilities includes the production, operation, development, or sale of the products of Alcan's or Pechiney's Brazing Sheet Business.

D. Defendants shall permit prospective Acquirers of Alcan's or Pechiney's Brazing Sheet Business to have reasonable access to personnel and to make inspections of the physical facilities of Alcan's or Pechiney's Brazing Sheet Business (whichever is then available for sale); access to any and all environmental, zoning, and other permit document and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of Alcan's or Pechiney's Brazing Sheet Business that each asset that was operational as of the date of filing of the Complaint in this matter will be operational on the date of divestiture.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Alcan's or Pechiney's Brazing Sheet Business.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the products of Alcan's or Pechiney's Brazing Sheet Business for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the ordinary course of business products that compete with those of Alcan's or Pechiney's Brazing Sheet Business.

H. Defendants shall warrant to the Acquirer of Alcan's or Pechiney's Brazing Sheet Business that there are not material defects in the environmental, zoning, or other permits pertaining to the operation of Alcan's or Pechiney's Brazing Sheet Business, and that following the sale of Alcan's or Pechiney's Brazing Sheet Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Alcan's or Pechiney's Brazing Sheet Business.

I. Nothing in this Amended Final Judgment shall be construed to require the Acquirer as a condition of any license granted by or to defendants pursuant Sections II(E) and IV (or Sections II(F) and IV) to extend to defendants the right to use the Acquirer's improvements to any of Alcan's or Pechiney's Brazing Sheet Business.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Amended Final Judgment, shall include the entire Alcan's or Pechiney's Brazing Sheet Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Alcan's or Pechiney's Brazing Sheet Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing, and selling brazing sheet in North America. Divestiture of Alcan's or Pechiney's Brazing Sheet Business may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the divested brazing sheet business will remain viable and that divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Amended Final Judgment,

1. Shall be made to an Acquirer that, in the United State's sole judgment, has the managerial, operational, and financial capability to compete effectively in the development, manufacture, and sale of brazing sheet in North America; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee To Effect Divestiture

A. If defendants have not divested Alcan's or Pechiney's Brazing Sheet Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of Pechiney's Brazing Sheet Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Pechiney's Brazing Sheet Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Amended Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Amended Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of Pechiney's Brazing Sheet Business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Pechiney's Brazing Sheet Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendant shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accounts, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting for the the trustee's efforts to accomplish the divestiture ordered under this Amended Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Pechiney's Brazing Sheet Business and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Pechiney's Brazing Sheet Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Amended Final Judgment, which may, if necessary, include, without limitation, extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Amended Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Alcan's or Pechiney's Brazing Sheet Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the

trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Amended Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this amended Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Amended Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Amended Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Amended Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Alcan's or Pechiney's Brazing Sheet Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for Alcan's or Pechiney's Brazing Sheet Business, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Amended Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve Alcan's or Pechiney's Brazing Sheet Business and to divest Alcan's or Pechiney's Brazing Sheet Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Amended Final Judgment, or of determining whether the Amended Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiffs option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Amended Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Amended Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Amended Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of Alcan's or Pechiney's Brazing Sheet Business, whichever is divested, during the term of this Amended Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Amended Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Amended Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provision.

XIII. Expiration of Amended Final Judgment

Unless this Court grants an extension, this Amended Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Amended Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Revised Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Revised Competitive Impact Statement relating to the proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

A. The Compliant and the Initial Proposed Final Judgment

In early July 2003, Alcan Inc. (''Alcan'') publicly announced that it would soon begin a tender offer for shares of Pechiney, S.A. (''Pechiney''), a transaction formally endorsed by Pechiney's board of directors on August 30, 2003. On September 29, 2003, the United States filed a civil antitrust suit alleging that Alcan's proposed acquisition of Pechiney would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Compliant alleged that a combination of Alcan and Pechiney would substantially lessen competition in the development, production, and sale of brazing sheet in North America. Pechiney and Alcan are, respectively, the second and fourth largest competitors in the sale of brazing sheet in North America. The acquisition would result in a single firm—Alcan—with a market share of over 40 percent, and the industry's two largest firms having a combined share of over 80 percent, of North American sales of brazing sheet. The Compliant alleged that the attendant reduction in competition in that highly concentrated market would lead to an increase in brazing sheet prices and a reduction in product quality and innovation to the detriment of North American consumers. Accordingly, the prayer for relief in the Compliant sought: (1) A judgment that the proposed acquisition would violate section 7 of the Clayton Act, and (2) a permanent injunction that would prevent Alcan from acquiring control of, or otherwise combining its assets with, Pechiney.

At the same time the Compliant was filed, the United States filed a proposed settlement that would allow Alcan to acquire Pechiney, but require defendants to divest Pechiney's entire North American brazing sheet business in such a way as to preserve competition in North America. According to the terms of the settlement, defendants were required to divest Pechiney's brazing sheet business[1] to a person acceptable to the United States, in its sole discretion, within 120 calendar days after Alcan receives preliminary notification from the responsible French stock market regulatory agency that Alcan's tender offer for shares of Pechiney has been successful, or within five (5) days after notice of entry of the Final Judgment, whichever was later. The United States, in its sole discretion, could extend the time period for the divesture one or more times, not to exceed a total of 60 days past the initial divestiture deadline. If defendants did not complete the ordered divestiture within the prescribed time period, then the United States could nominate, and the Court would appoint, a trustee with sole authority to divest Pechiney's brazing sheet business.

In accordance with the Tunney Act, the United States published the proposed settlement, the public comments, and the government's responses in the **Federal Register.** *See* 68 FR 70287 (Dec. 17, 2003) and 69 FR 18930 (April 6, 2004).

B. The Amended Final Judgment

In early March 2004, defendants indicated that, for many reasons, their divestiture of Pechiney's brazing sheet business would take significantly more time than they had initially anticipated. They also disclosed that they were seriously considering a major corporate reorganization, which would likely result in a sale or spin off of many of defendants' aluminum rolling operations—including Alcan's own brazing sheet business[2]—to a separate, independent, and viable new entity.[3] Defendants asked, and the United States later agreed, to amend the pending Final Judgment in such a way as to accommodate this business development, without compromising its paramount objective of vigorous competition in the sale of brazing sheet in North America.[4]

The new settlement consists of an Amended Final Judgment and an Amended Hold Separate Stipulation and Order. The Amended Final Judgment would preserve competition in the sale of brazing sheet in North America by requiring defendants to divest *either* Alcan's *or* Penchiney's brazing sheet business to a person acceptable to the United States, in its sole discretion, within 180 calendar days after filing of the proposed Amended Final Judgment, or the Court's entry of the Amended Final Judgment, which is later. Because the Amended Final Judgment permits a divestiture option that the parties did not mention or contemplate in the initial settlement, interested persons should be provided notice of, and an opportunity to comment upon, the Amended Final Judgment. Accordingly, the parties have stipulated that the proposed Amended Final Judgment may be entered by the Court after compliance with the Tunney Act. Entry of the proposed Amended Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Amended Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Proposed Transaction

Alcan is a Canadian corporation based in Montreal, Quebec. One of the world's largest fully integrated aluminum

[1] Pechiney's brazing sheet business, as defined in section II(E) of the proposed Final Judgment (and Amended Final Judgment), includes all tangible and intangible assets of Pechiney's Ravenswood, West Virginia, aluminum rolling mill and the engineering facilities, wherever located, that provide research and development support for any product produced at the Ravenswood plant.

[2] Alcan's brazing sheet business consists of two aluminum rolling mills, which are located in Oswego, New York, and Fairmount, West Virginia. *See* Amended Final Judgment, § II (F).

[3] The government understands that the reorganization was driven by business reasons unrelated to the ordered divestiture of Pechiney's brazing sheet business. To alleviate the European Community's competitive concerns about Alcan's acquisition of Pechiney, defendants previously had agreed, *inter alia*, to divest their interests in a massive aluminum smelter and aluminum hot rolling mill complex in Europe. Also, before acquiring Pechiney, Alcan had considered selling or otherwise disposing of its aluminum manufacturing facilities that make relatively low margin products (*e.g.*, can stock), and focusing instead on production of higher margin products such as packaging materials and specialty metals. The United States understands that defendants believe they can meet both objectives by combining the European assets that the EC had ordered divested with Alcan's own Aluminum Rolled Products Division to create a new stand-alone firm, which would then be sold to an interested purchaser or spun off to defendants' own stockholders, in a transaction that would satisfy the divestiture requirements of the Amended Final Judgment.

[4] On April 22, the parties notified the Court that they were seriously considering amending the initial settlement, and they asked the Court to refrain hearing or ruling on the proposed Judgment and a pending motion to intervene until after June 1, 2004. The Court subsequently entered a stipulated order to that effect on April 26, 2004.

producers, Alcan produces primary aluminum ingot and a wide range of rolled aluminum products, including brazing sheet. Its annual revenues exceed $12.5 billion, including over $30 million in North American sales of brazing sheet. This business operation is managed by a domestic subsidiary of Alcan, Alcan Aluminum Corporation.

Pechiney is a French corporation based in Paris, France. Pechiney is also a major fully integrated aluminum producer, with annual revenues exceeding $11.3 billion. Its U.S. subsidiary, Pechiney Rolled Products, LLC, produces a wide variety of rolled aluminum products (including brazing sheet) in an aluminum rolling mill in Ravenswood, West Virginia. Pechiney's total North American sales of brazing sheet exceed $100 million annually.

Alcan launched a tender offer for shares of Pechiney, a transaction valued at over $4.6 billion. The tender offer, publicly announced in early July 2003 and approved in August by Pechiney's board of directors, was expected to be completed in early December 2003. At the time of the tender offer, Alcan's acquisition of Pechiney would have combined, respectively, the fourth and second largest competitors in the sale of brazing sheet in North America, and substantially lessened competition in this already highly concentrated market.

The acquisition would have combined Alcan, a low-cost new entrant and pricing maverick, with Pechiney, a large industry incumbent. The deal would have eliminated Alcan's incentive to expand its sales quickly by reducing its brazing sheet prices and increase its sales at the expense of larger rivals such as Pechiney, and end the current intense competitive rivalry in developing, producing, and selling brazing sheet in North America. This competition, which promised to intensify in the next few years as Alcan completed qualifying its brazing sheet for more applications with other North American customers, had already produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and contractual terms for this material. The transaction would have reduced the number of significant competitors in the sale of brazing sheet in North America from four to three, and substantially increased the prospect of future tacit or explicit post-merger coordination between these firms to increase prices of brazing sheet to the detriment of consumers. Other North American competitors in the sale of brazing sheet had neither the production capacity nor competitive incentive, individually or collectively, to discipline a small but significant post-merger unilateral or cooperative price increase in brazing sheet.

B. The Effects of the Transaction on Competition in the Sale of Brazing Sheet

1. Relevant market: the sale of brazing sheet in North America.

The Complaint alleges that development, production, and sale of brazing sheet is a relevant product market within the meaning of section 7 of the Clayton Act. Brazing sheet describes a class of custom-engineered aluminum alloys made of a solid metal core clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When heated to the appropriate temperature, the cladding alloy melts and forms a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together. Brazing sheet is ideally suited, and virtually all of it is used, for fabricating the major components of heat exchange systems for motor vehicles. These heat exchangers include engine cooling systems, such as radiators and oil coolers, and climate control systems, such as heater cores and air conditioning units (*i.e.*, evaporator and condenser cores).

By constructing the basic components of motor vehicle heat exchangers with brazing sheet, a parts maker can avoid the tedious and costly task of welding and soldering individual components, many of which have unusually intricate surfaces that form joints deep within the heat exchange unit. A parts maker can instead loosely assemble brazed components and bake the entire assembly in a brazing oven. The surfaces of the components will melt, converting the assembly into a solid, leak-proof heat exchange unit.

The major components of all heat exchangers used in motor vehicles are made of brazing sheet, a material that enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In heat exchange applications, no other material can match the combination of low cost, strength, light weight, durability, formability, and corrosion resistance provided by brazing sheet.

A small but significant and nontransitory increase in prices for brazing sheet would be profitable and sustainable because it would not cause parts makers to begin using significant amounts of other materials to make heat exchangers for motor vehicles. The development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.[5]

The Complaint alleges that the sale of brazing sheet in North America is a relevant geographic market within the meaning of section 7 of the Clayton Act. Over ninety percent of brazing sheet sold in North America is produced by firms located in either the United States or Canada. Some customers import brazing sheet into North America from overseas sources. Foreign brazing sheet, however, is significantly more expensive and more prone to unpredictable and costly delivery delays than brazing sheet produced in North America. North American customers are reluctant to rely on it for general production requirements. A small but significant and nontransitory increase in prices of brazing sheet sold in North America would be profitable and sustainable because it would not be undermined by increased customer imports of brazing sheet from overseas sources. North America is a relevant geographic market in which to assess the competitive effects of Alcan's proposed acquisition of Pechiney on sales of brazing sheet.

2. Anticompetitive effects of the acquisition.

The Complaint alleges that in this highly concentrated market for brazing sheet, a combination of Alcan and Pechiney likely would: (i) Substantially lessen competition in the development, production, and sale of brazing sheet in North America; (ii) eliminate actual and potential competition between Alcan's and Pechiney's brazing sheet businesses; and (iii) increase prices and reduce current levels of quality and innovation for brazing sheet in North America.

Specifically, the Complaint alleges that Pechiney and Alcan are, respectively, the second and fourth largest producers of brazing sheet in North America. The combined firm and one other producer command over 80 percent of brazing sheet sales in North America. Two smaller firms also sell

[5] Brazing sheet is designed for and sold to motor vehicle parts makers (and others) on an application-specific basis. Thus, it may be possible to delineate relevant markets smaller than the ''all brazing sheet'' market alleged in the Complaint. A producer of brazing sheet for use in one type of heat exchange component, however, generally has the ability to make and market brazing sheet suitable for use in producing the other types of components for heat exchange units. According to the Merger Guidelines, if such production substitutability is ''nearly universal'' among the firms that make and sell brazing sheet, then it is appropriate, as a matter of convenience, to describe the relevant product markets as ''all brazing sheet.'' *See* Horizontal Merger Guidelines, n. 14 (1997 rev.)

brazing sheet in North America. However, these small firms do not have sufficient excess production capacity or capability to attract significant sales away from the larger market incumbents, and thereby effectively constrain a post-merger exercise of market power by those firms.

Alcan's acquisition of Pechiney is likely to diminish competition substantially. First, the remaining competitors would be more likely to successfully engage in tacit or explicit coordinated pricing to the detriment of consumers, because they would not need to worry about the loss of sales to Alcan, currently a small, ''hungry,'' low-cost new entrant. Second, Alcan could unilaterally increase its prices for brazing sheet for which it and Pechiney are the only qualified suppliers.

New entry into the development, production, and sale of brazing sheet in North America is difficult. To produce brazing sheet, a firm must have an aluminum hot rolling mill (which costs at least $80 million and takes at least three years to construct). Even after acquiring an aluminum hot rolling mill, a new firm can begin selling brazing sheet to customers only after it had made an additional substantial investment in developing and mastering alloy-making technology, successfully ''qualified'' its products with prospective customers by completing a series of time-consuming tests of brazing sheet materials and sample heat exchange components, and finally, acquired some actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts makers.[6] Those so-called ''sunk'' entry costs[7] are very large relative to the size of the North American market for brazing sheet, and there is a very high risk that a new entrant may not receive any profits from its entry. In these circumstances, it is unlikely that, after a combination of Alcan and Pechiney, new entry into the brazing sheet market in North America would occur so rapidly and be of such magnitude that it would effectively constrain a cooperative or unilateral post-merger exercise of market power by incumbent products of brazing sheet.

[6] It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York, to qualify with enough customers to make a significant sales impact.

[7] The term ''sunk costs'' as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market, *i.e.*, costs that were uniquely incurred to enter the production and sale of brazing sheet in North America and cannot be recovered upon exit from that industry.

III. Explanation of the Proposed Amended Final Judgment

The proposed Amended Final Judgment will preserve competition in the sale of brazing sheet in North America by requiring defendants to sell either Alcan's or Pechiney's brazing sheet business to an acquirer acceptable to the United States within 180 calendar days after the filing of the Amended Final Judgment or within five (5) days after notice of entry of the Amended Final Judgment, whichever is later. The United States may extend this time period for divestiture one or more times, for a total time not to exceed 60 days. Defendants must use their best efforts to divest either Alcan's or Pechiney's brazing sheet business as expeditiously as possible, and until the ordered divestiture takes place, defendants must cooperate with any prospective purchasers of whichever business is then available for sale.

If defendants do not accomplish the ordered divestiture within the prescribed time period, the United States will nominate, and the Court will appoint, a trustee to assume sole power and authority to divest Pechiney's brazing sheet business. Defendants must cooperate fully with the trustee's efforts to divest Pechiney's brazing sheet business to an acquirer acceptable to the United States and periodically report to the United States on their divestiture efforts.

If a trustee is appointed, defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is completed. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including, without limitation, extending the trust and the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Amended Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Amended Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Amended Final Judgment

The parties have stipulated that the proposed Amended Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry of the decree upon the Court's determination that the proposed Amended Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of the proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the proposed Amended Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Amended Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Esquire, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Amended Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Amended Final Judgment.

VI. Alternatives to the Proposed Settlement

A. Alternatives to the Initial Proposed Final Judgment

Before filing its Complaint, the United States considered, as an alternative to the initial proposed Final Judgment, pursuing a full trial on the merits, seeking preliminary and permanent injunctions against Alcan's acquisition

of Pechiney. However, the United States was satisfied that the divestiture of Pechiney's brazing sheet business, as proposed in the initial Final Judgment, would preserve and ensure continued competition in the relevant market, and hence, prevent Alcan's acquisition of Pechiney from having any adverse competitive effects.

B. Alternatives to the Amended Final Judgment

The Amended Final Judgment, which would permit defendants to divest *either* Alcan's *or* Pechiney's brazing sheet business, provides a remedy that is more flexible, but no less protective of continued competition, than the relief proposed in the initial Final Judgment. However, in addition to permitting defendants to sell the Alcan brazing sheet business, the Amended Final Judgment may permit defendants a few more months to accomplish the ordered divestiture.[8] Before agreeing to file an amended settlement, the United States seriously considered whether defendants—or for that matter, a Court-appointed trustee—could complete a divestiture of Pechiney's brazing sheet business more quickly than the divestiture deadline established in the Amended Final Judgment. The government concluded that there was a high probability that defendants would divest Alcan's brazing sheet business, as part of their overall corporate reorganization, before they (or a Court-appointed trustee) could sell Pechiney's brazing sheet business. For that reason, the government was willing to amend the original settlement to allow defendants the option to divest Alcan's brazing sheet business. The United States, however, is firmly committed to seeking the appointment of a trustee to divest Pechiney's brazing sheet business if defendants fail to complete the ordered divestiture by the deadline set forth in the Amended Final Judgment. See Amended Final Judgment § IV.

VII. Standard of Review Under the Tunney Act for the Proposed Amended Final Judgment

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Amended Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the District of Columbia Circuit held, the Tunney Act permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[9] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in a unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Case law requires that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[10]

The proposed Amended Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court

[8] As noted above, the initial Final Judgment required defendants to divest Pechiney's brazing sheet business within 120 days after Alcan receives notice that its tender offer for Pechiney was successful, or five days after entry of the Final Judgment, whichever is later. If the Court had entered that decree in late April or early May, defendants would have been required to complete their divestiture of Pechiney's brazing sheet business no later than early July 2004, assuming the government would have granted defendants a full 60-day extension of time to complete the ordered divestiture, as permitted under the initial Final Judgment. (The United States had already notified the Court that it had extended the divestiture deadline by an additional 30 days under that decree.)

In contrast, the Amended Final Judgment would require defendants to divest either Alcan's or Pechiney's brazing sheet business within 180 days after May 18th, or five days after entry of the decree, presumably in late October or early November 2004, a deadline that the United States may also, in its discretion, extend by an additional 60 days. At the earliest, the ordered divestiture under the Amended Final Judgment would occur several months later than the divestiture that had been ordered in the initial Final Judgment. The government concluded that, under the circumstances, such an extension of time for defendants to complete their divestiture under the Amended Final Judgment would not unreasonably delay the introduction of a viable new competitor into the North American market for sale of brazing sheet.

[9] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715–16 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.N. 6535, 6538.

[10] *Cf.* BNS, 858 F.2d at 463 (holding that the court's ''ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Telephone & Telegraph Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see *also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

III. Determinative Documents

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Amended Final Judgment.

Dated: May 26, 2004.

Respectfully submitted,

Anthony E. Harris, Illinois Bar No. 1133713,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

Attorney for the United States

Certificate of Service

I, Anthony E. Harris, hereby certify that on May 26, 2004, I caused the foregoing notice of Filing of Amended Final Judgment and Amended Hold Separate Stipulation and Order, Amended Final Judgment, Amended Hold Separate Stipulation and Order, and Revised Competitive Impact Statement to be served on defendants by sending a facsimile and by mailing a copy first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendants Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

D. Stuart Meiklejohn, Esquire, Michael B. Miller, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498.

Peter B. Gronvall, Esquire, Sullivan & Cromwell, 1701 Pennsylvania Avenue, NW., Suite 800, Washington, DC 20006.

Anthony E. Harris, Esquire, Illinois Bar #1133713, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6583.

[FR Doc. 04–13343 Filed 6–14–04; 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—ReJen Lowi Joint Venture

Notice is hereby given that, on May 18, 2004, 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 ReJen Lowi Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are The ReJen Company, Washoe Valley, NV and Alvin Lowi & Associates, Rancho Palos Verdes, CA. The nature and objectives of the venture are to build and test a high efficiency regenerated cycle reciprocating diesel engine that will result in increased energy efficiency and lower emissions. The activities of this project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13342 Filed 6–14–04; 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 Southwest Research Institute: Clean Diesel IV

Notice is hereby given that, on May 18, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI''): Clean Diesel IV 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, Lubrizol Corporation, San Antonio, TX and Johnson Matthey, Malvern, PA 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 Southwest Research Institute (''SwRI''): Clean Diesel IV intends to file additional written notification disclosing all changes in membership.

On April 6, 2004, Southwest Research Institute (''SwRI''): Clean Diesel IV 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 May 10, 2004 (69 FR 25923).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–13341 Filed 6–14–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Capital Punishment Report of Inmates Under Sentence of Death.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics 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. The proposed information collected is published to obtain comments from the public and affected agencies. The proposed information collected was previously published in the **Federal Register** Volume 69, Number 52, on page 12712, on March 17, 2004, allowing a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 15, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to the Officer of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the Form/Collection:* Capital Punishment Report of Inmates Under Sentence of Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: NPS–8 Report of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty—No Statute in Force; and NPS–8C Status of Death Penalty—Statute in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections and Attorneys General. Others: Federal Bureau of Prisons. Approximately 104 respondents (two from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody will be asked to provide information for the following categories: condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by other than execution. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, State officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for this collection is 95. 43 respondents will complete the forms NPS–8/8A and 52 respondents will complete forms NPS–8B/8C. The estimated total number of responses filed is 3,800: 171 responses at 30 minutes each form NPS–8, 3,577 responses at 30 minutes each form NPS–8A, and 52 responses at 15 minutes each for the NPS–8B or NPS–8C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,888 annual total burden hours associated with the collection.

If additional information is required, contact: Mrs. Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: June 8, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 04–13422 Filed 6–14–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 7, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, local, or tribal government.

Number of Respondents: 6,657,000.

Annual Responses: 15,057,750.

Average Response Time: Varies from 1 minute to for an employee to notify an employer of the need for leave to 20 minutes for an employee to obtain a medical certification.

Total Annual Burden Hours: 1,370,103.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 107 Stat. 6, 29 U.S.C. 2601, requires private sector employers of 50 or more employees and public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to ''eligible'' employees for certain family and medical reasons. Records are required so that DOL can determine employer compliance with FMLA.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Energy Employees Occupational Illness Compensation Program Act Forms .

OMB Number: 1215–0197.

Frequency: On occasion.

Type of Response: Reporting and Recordkeeping.

Affected Public: Individuals and Business or other for-profit.

Number of Respondents: 50,019.

Form	Estimated number of annual responses	Average response time (hours)	Annual burden hours
EE–1	5,163	0.28	1,463
EE–2	7,485	0.35	2,620
EE–3	11,840	1.00	11,840
EE–4	2,960	0.50	1,480
EE–5a	2,368	0.50	1,184
EE–7	11,840	0.25	2,960
EE–7a	1,500	0.25	375
EE–8	1,554	0.08	130
EE–9	1,303	0.08	109
EE–20	4,006	0.08	334
Total:	50,019	.....	22,495

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $12,742.

Description: The information collected by these forms is used by DOL to determine eligibility for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. 7384 *et seq.* The information, with the medical evidence and other supporting documentation, is used to determine whether or not the claimant is entitled to compensation under the Program.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–13368 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 4, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: The Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(f)(16)).

OMB Number: 1218–0218.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 9,000,000.

Number of Annual Responses: 1,326,000.

Estimated Time Per Response: Varies from 1 minute to maintain a certification record of fire extinguishers tested off-site to 33 minutes to test fire extinguishers on-site and to generate and maintain the certification record.

Total Burden Hours: 123,180.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $12,240,000.

Description: 29 CFR 1910.157(f)(16) requires employers to develop and maintain a certification record of hydrostatic testing of portable fire extinguishers. The certification record must include the date of inspection, the signature of the person who performed the test, and the serial number (or other identifier) of the fire extinguisher that was tested. The certification record provides assurance that fire extinguishers have been hydrostatically tested in accordance with and at the intervals specified in Table L–1, thereby ensuring that they will operate properly in the event employees need to use them.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Portable Fire Extinguishers (Annual Maintenance Certification Record) (29 CFR 1910.157(e)(3)).

OMB Number: 1218–0238.

Frequency: Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 135,000.

Number of Annual Responses: 135,000.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 67,500.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $19,440,000.

Description: 29 CFR 1910.157(e)(3) specifies that employers must subject each portable fire extinguisher to an annual maintenance inspection and record the date of the inspection. In addition, this provision requires employers to retain the inspection record for one year after the last entry or for the life of the shell, whichever is less, and to make the record available to OSHA upon request. This recordkeeping requirement assures employees and Agency compliance officers that portable fire extinguishers located in the workplace will operate normally in case of fire; in addition, this requirement provides evidence to OSHA compliance officers during an inspection that the employer performed the required maintenance checks on the portable fire extinguishers.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–13369 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,239]

Acme Mills Co., Fairway Products, Quincy, Michigan, Now Located In Hillsdale, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 3, 2003, applicable to workers of Acme Mills Company, Fairway Products, Quincy, Michigan. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66880).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive parts, such as door panels, seat suspensions, die cut parts, headrests, armrest components, pull straps and visor straps.

New information shows that in January 2004, the subject firm relocated the remaining employees, equipment and machinery to a building owned by Acme in nearby Hillsdale.

Accordingly, the Department is amending this certification reflect the new location, Hillsdale, Michigan.

The intent of the Department's certification is to include all workers employed at Acme Mills Company, Fairway Products, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–53,239 is hereby issued as follows:

All workers of Acme Mills, Fairway Products, Quincy, Michigan, now located in Hillsdale, Michigan, who became totally or partially separated from employment on or after September 26, 2002, through November 3, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13388 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,895]

Armin Tool & Manufacturing Co., a Division of Armin Industries, South Elgin, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2004, in response to a worker petition filed by a company official on behalf of workers at Armin Tool & Manufacturing Co., a division of Armin Industries, South Elgin, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 27th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13373 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,847]

Artex International, Inc., Highland, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2004, in response to a petition filed by a company official on behalf of workers at Artex International, Inc., Highland, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 25th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13372 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,790]

Bourns Microelectronics Modules, Inc., A Subsidiary Of Bouens, Inc., New Berlin, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 27, 2004, in response to a petition filed on behalf of workers of Bourns Microelectronics Modules, Inc., a subsidiary of Bourns, Inc, New Berlin, Wisconsin.

The petitioning group of workers is covered by an active certification issued on December 6, 2002, and which remains in effect (TA–W–42,217 as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of June, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13382 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,742]

Competitive Machining, Inc., Standish, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 19, 2004, in response to a petition filed by a company official on behalf of workers at Competitive Machining, Inc., Standish, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 24th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13370 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,617]

Fleetguard, Inc., Neillsville West Plant, a Subsidiary of Cummins, Inc., Neillsville, Wisconsin; Notice of Negative Determination on Reconsideration

On March 5, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department published the Notice in the **Federal Register** on March 16, 2004 (69 FR 12350).

The initial Trade Adjustment Assistance (TAA) petition was filed on behalf of workers producing exhaust systems at Fleetguard, Inc., Neillsville West Plant, a subsidiary of Cummins, Inc., Neillsville, Wisconsin. The petition was denied because the investigation revealed no sales or production declines and no shift of production during the relevant time period. The petitioner also alleged that the company was secondarily affected as a supplier to a TAA-certified customer, but the investigation found that was not the case.

In response to the petitioner's request for reconsideration, the Department conducted an investigation of events during the relevant time period (2001, 2002, and January-October 2003). The Department investigated company sales, production, employment and import levels as well as possible shifts of production abroad.

The investigation revealed that 2002 sales and production levels were greater than 2001 levels and that January-October 2003 sales and production levels were greater than January-October 2002 levels. Employment decreased in 2002 from 2001 levels and increased during January-October 2003 from January-October 2002 levels.

The company (including the subject facility, parent company, and affiliated facilities) did not import during 2001, 2002 and January-October 2003. There was no shift of production abroad during the relevant time period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Fleetguard, Inc., Neillsville West Plant, a subsidiary of Cummins, Inc., Neillsville, Wisconsin.

Signed at Washington, DC, this 4th day of June, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13387 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,227]

Glenshaw Glass Co., Glenshaw, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 16, 2004, Glass, Molders, Plastics & Allied Workers International Union, Local 134 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 18, 2004, and published in the **Federal Register** on May 24, 2004 (69 FR 29575).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Glenshaw Glass Company, Glenshaw, Pennsylvania was denied because criterion (1) was not met. Employment at the subject plant did not decline from 2002 to 2003, and January 2004 as compared to January 2003.

The petitioner alleges that employment declined at least 5 percent ''at this point'' and questions total employment data collected during the original investigation.

In the request for reconsideration, the company official confirmed that there were no employment declines in 2003 and January 2004. The official further stated that employment is even likely to increase further in 2004.

The petitioner further alleges that production at the subject facility was impacted by imports from Canada.

In order for import data to be considered, employment declines must have occurred at the subject facility in the relevant period. As criterion (1) has not been met for the petitioning worker group, imports are irrelevant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of June, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13384 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,694]

Hewlett Packard, HP Services Americas IT Division, Cupertino, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 8, 2004, in response to a petition filed by the State of California on behalf of workers at Hewlett Packard, HP Services Americas IT Division, Cupertino, California.

The investigation found that the petitioning worker group's division does not exist at the subject facility. Consequently, the investigation has been terminated.

Signed in Washington, DC this 2nd day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13375 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,973]

Hubbell Electrical Products, Louisiana, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 25, 2004, in response to a worker petition filed by the Missouri Division of Workforce Development on behalf of workers at Hubbell Electrical Products, Louisiana, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 28th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13374 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,217]

Microelectronic Modules Corporation, Now Known as Bourns Microelectronic Modules Corporation, Inc., a Subsidiary of Bourns, Inc., New Berlin, Wisconsin; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 2002, applicable to workers of Microelectronic Modules Corporation, New Berlin, Wisconsin. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of computer chips and resistor products.

New information shows that Bourns Inc. purchased Microelectronic Modules Corporation, New Berlin, Wisconsin on or about October 30, 2003 and the firm is now known as Bourns Microelectronic Modules Corporation, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Bourns Microelectronic Modules Corporation, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Microelectronic Modules Corporation, New Berlin, Wisconsin who were adversely affected by increased imports.

The amended notice applicable to TA–W–42,217 is hereby issued as follows:

All workers of Microelectronic Modules Corporation, now known as Bourns Microelectronic Modules Corporation, Inc., a subsidiary of Bourns Inc., New Berlin, Wisconsin, who became totally or partially separated from employment on or after September 23, 2001, through December 6, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13389 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,820; TA–W–54,820A]

Moosehead Manufacturing: Monson, Maine; Dover-Foxcroft, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification

of Eligibility to Apply for Worker Adjustment Assistance and a negative determination to apply for Alternative Trade Adjustment Assistance on May 13, 2004, applicable to workers of Moosehead Manufacturing, Monson, Maine.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of furniture.

New findings show that the information provided by Moosehead Manufacturing Company in the petition for Trade Adjustment Assistance and, consequently, in the Business Confidential Data Request form, included the company's Dover-Foxcroft facility in Maine. Workers at the Dover-Foxcroft, Maine facility also produce furniture, and their layoffs were due to the same circumstances.

Accordingly, the Department is amending the certification to cover workers at Moosehead Manufacturing Company, Dover-Foxcroft, Maine.

The intent of the Department's certification is to include all workers of Moosehead Manufacturing Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,820 is hereby issued as follows:

All workers of Moosehead Manufacturing Company, Monson, Maine (TA–W–54,820) and Moosehead Manufacturing Company, Dover-Foxcroft, Maine (TA–W–54,820A), who became totally or partially separated from employment on or after April 7, 2003, through May 13, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of Moosehead Manufacturing Company, Monson and Dover-Foxcroft, Maine, are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 28th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13381 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,183]

Northland Cranberries, Inc., Jackson Plant, Jackson, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 21, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 17, 2004, and published in the **Federal Register** on April 6, 2004 (69 FR 18109).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Northland Cranberries, Inc., Jackson Plant, Jackson, Wisconsin, was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the entities to which the subject facility submitted bids for bottled juice products in 2002, 2003 and January 2004. This survey revealed no bids of bottled juice products awarded to foreign entities during the relevant period. The subject firm did not increase its reliance on imports of bottled juice products during the relevant period.

The request for reconsideration alleges that the company was importing raw materials.

The foreign sourcing of raw materials is not a factor in determining the import impact of the finished product. In assessing import impact in connection with petitioning worker eligibility for TAA, the Department considers data regarding imports that are like or directly competitive with those produced at the subject firm.

The petitioner further alleges that two major customers of the subject firm ''pulled out'' of Northland Cranberries, Inc. to use other companies including foreign bottling facilities.

The Department conducted a survey of the additional customers provided by the petitioner in the request for reconsideration. These customers reported no imports of like or directly competitive products with those manufactured by the subject firm during the relevant period. The surveyed customers further stated that all bottling of juices previously done for them by the subject firm was shifted to other domestic facilities.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of June, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13385 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,128]

Precision Disc Corp., Knoxville, TN; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 14, 2004, the Sheet Metal Workers Union, Local 555, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on March 15, 2004, and the notice was published in the **Federal Register** on April 6, 2004 (69 FR 18109).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of June, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13386 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,963]

Snow River Products, Crandon, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2004, in response to a petition filed on behalf of workers at Snow River Products, Crandon, Wisconsin.

One of the three petitioning workers was separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 1st day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13376 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,946]

Teleplan-Norcross, Norcross, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 20, 2004, in response to a worker petition filed by a company official on behalf of workers at Teleplan-Norcross, Norcross, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 3rd day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13379 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 54,939]

TI Group Automotive Systems LLC, Greenville, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 29, 2004, in response to a petition filed by a company official on behalf of workers at TI Group Automotive Systems LLC, Greenville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 2nd day of June, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13378 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,932]

United Plastics Group, Bensenville, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 19, 2004, in response to a worker petition filed an agent of the Illinois Department of Employment Security on behalf of workers at United Plastics Group, Bensenville, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 25th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13371 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,880]

Wehadkee Yarn Mills, Rock Mills Division, Rock Mills, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 11, 2004, in response to a petition filed by a company official on behalf of workers at Wehadkee Yarn Mills, Rock Mills Division, Rock Mills, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 2nd day of June, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13377 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,728]

Weiser Lock, a Division of Black and Decker Corp., Including Leased Workers of MOS, Inc. Inventory Management & Manufacturing Outsourcing, Robert Half Finance & Accounting, TEKWORK, Inc., Tucson, Arizona; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 19, 2004, applicable to workers of Weiser Lock, a division of Black and Decker Corporation, Tucson, Arizona. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of MOS, Inc. Inventory Management & Manufacturing Outsourcing; Robert Half Finance & Accounting; and TEKWORK, Inc. were employed at Weiser Lock, a division of Black and Decker Corporation, at the Tucson, Arizona location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of MOS, Inc. Inventory Management & Manufacturing Outsourcing; Robert Half Finance & Accounting; and TEKWORK, Inc. working at Weiser Lock, a division of Black and Decker Corporation, Tucson, Arizona.

The intent of the Department's certification is to include all workers employed at Weiser Lock, a division of Black and Decker Corporation, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–54,728 is hereby issued as follows:

All workers of Weiser Lock, a division of Black and Decker Corporation, including leased workers of MOS, Inc. Inventory Management & Manufacturing Outsourcing; Robert Half Finance & Accounting; and TEKWORK, Inc. Tucson, Arizona, who became totally or partially separated from employment on or after February 9, 2003, through May 19, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13383 Filed 6–14–04; 8:45 am]

BILLING CODE 4510–30–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Public Meeting

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice of meeting.

Authority: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609

SUMMARY: The Council on Environmental Quality (CEQ), the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation (U.S. Institute) and Governor David Freudenthal of Wyoming are hosting a public meeting on June 22, 2004. The meeting will focus on making the National Environmental Policy Act (NEPA) work better for the public by more effectively involving interested communities and individuals. Representatives from CEQ and the U.S. Institute will briefly discuss the latest NEPA initiatives from their agencies, including CEQ's NEPA Task Force and the U.S. Institute's National Environmental Conflict Resolution Advisory Committee. Representatives of various public and private organizations will discuss their experiences with involvement in the NEPA process, followed by opportunities for public discussion.

DATES: The meeting will be held on June 22, 2004, from 8:30 a.m. to 4 p.m. Public discussion is scheduled for 11:30 a.m. to 12:15 p.m. and 2:15 p.m.–3 p.m. A lunch break is scheduled from 12:15 p.m.–1:30 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn, 1701 Sheridan Avenue, Cody, Wyoming.

Additional Information: Interested persons may wish to review information about CEQ's NEPA Task Force at the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http://ceq.eh.doe.gov/ntf* and information about the U.S. Institute and the associated National Environmental Conflict Resolution Advisory Committee at *http://www.ecr.gov.* For further information, contact: Dinah Bear, CEQ, (202) 395–7421; Kirk Emerson, U.S. Institute (520) 670–5299, or Mary Flanderka, Governor's Planning Office, at (307) 777–7575.

Dated: June 8, 2004.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 04–13397 Filed 6–14–04; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by ??? This application may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant* Donal T. Manahan, Permit Application No. 2005–007
Department of Biological Sciences, University of Southern California, Los Angeles, CA 90089–0371.

Activity for Which Permit Is Requested

Introduce Non-indigenous species, and import into the United States. The applicant plans to import bacterial cultures of E. coli, which are components of several molecular biology DNA cloning kits, to be used in experiments conducted by a biology class at the McMurdo Station Crary Lab. All E. coli cultures will be sterilized by autoclaving at the end of each season.

In addition, the applicant also plans to import several unicellular algae species (Dunaliella tertiolecta, Rhodomonal sp., and Isochrysis galbana), which are required as food for Antarctic larval forms that will be cultured in the aquarium at McMurdo Station. The algal cultures will be used to start a culture collection of algae needed for experiments starting in August 2004. All algae and seawater that might contain algae will be autoclaved, ozone treated, or otherwise chemically treated to kill the remaining algal cells after use.

Location

Crary Science and Engineering Center, McMurdo Station, Antarctica.

Dates

August 16, 2004 to February 15, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 04–13474 Filed 6–14–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board Committee on Strategy and Budget

DATE AND TIME: June 18, 2004, 11 a.m.—1 p.m., closed session

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, June 18, 2004

Closed Session (11 a.m. to 1 p.m.)

The National Science Board Committee on Strategy and Budget will discuss the NSF FY 2006 budget.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer.

[FR Doc. 04–13516 Filed 6–10–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–206, 50–361, and 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station; Exemption From Certain Low-Level Waste Shipment Tracking Requirements in 10 CFR Part 20 Appendix G

1.0 Background

The Southern California Edison Company (SCE) is the licensee and holder of Facility Operating License Nos. DPR–13, NPF–10, and NPF–15 issued for San Onofre Nuclear Generating Station (SONGS) Units 1, 2, and 3, respectively, located in San Diego County, California. SONGS Unit 1 is a permanently shutdown nuclear reactor facility while Units 2 and 3 are operating reactors. Beginning around 1999, the amount of radioactive waste shipped from the site significantly increased. The majority of the radioactive waste generated by the site is related to Unit 1 decommissioning activities. Inherent to the decommissioning process, large volumes of slightly contaminated concrete rubble and debris are generated that require shipment for disposal in offsite low-level radioactive waste burial sites. Due primarily to the volume of radioactive waste, SCE has encountered an increase in the number of routine shipments that take longer than 20 days from transfer to the shipper to receipt acknowledgment from the burial site. Each shipment with receipt notifications greater than 20 days requires a special investigation and report to the Nuclear Regulatory Commission (NRC) which the licensee believes to be burdensome and unnecessary to meet the intent of the regulation.

2.0 Request/Action

In a letter to the Commission dated January 26, 2004, SCE requested an exemption from the requirements in 10 CFR Part 20, Appendix G, Section III.E, to investigate and file a report to the NRC if shipments of low-level radioactive waste are not acknowledged by the intended recipient within 20 days after transfer to the shipper. This exemption would extend the time period that can elapse during shipments of low-level radioactive waste before SCE is required to investigate and file a report to the NRC from 20 days to 35 days. The exemption would be limited to rail and combination truck/rail shipping methods. The exemption request is based on a statistical analysis of the historical data of low-level radioactive waste shipment times from the licensee's site to the disposal site.

3.0 Discussion

The proposed action would grant an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste to 35 days. Since 1999, SCE has made over 150 shipments of low-level radioactive waste as part of the decommissioning efforts at the facility. MHF Logistical Solutions is the rail broker company used by SCE to perform these shipments. MHF Logistical Solutions has a tracking system that monitors the progress of the shipments from their originating point at SONGS to their final destination at Envirocare of Utah, Inc. The shipments are made by either rail or combination truck/rail and, according to SCE, the transportation time alone takes over 16 days on average, with one shipment taking 57 days.

In addition, administrative procedures at Envirocare and mail delivery can add up to 11 additional days. Based on historical data and estimates of the remaining waste at SONGS Unit 1, SCE could have to perform over 100 investigations and reports to the NRC during the next five years if the 20-day notification criteria is maintained. The licensee affirms that the low-level radioactive waste shipments will always be tracked throughout transportation until they arrive at their intended destination. SCE believes that the need to investigate, trace, and report to the NRC on the shipment of low-level radioactive waste packages not reaching their destination within 20 days does not serve the underlying purpose of the rule and is not necessary. As a result, SCE states that granting this exemption will not result in an undue hazard to life or property.

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of regulations in 10 CFR Part 20 if it determines the exemption is authorized by law and would not result in undue hazard to life or property. There are no provisions in the Atomic Energy Act (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer. Therefore, the Commission concludes that there is no statutory prohibition on the issuance of the requested exemption and the Commission is authorized to grant the exemption by law.

The Commission acknowledges that based on the statistical analysis of low-level radioactive waste shipments from the SONGS site, the need to investigate and report on shipments that take longer than 20 days could result in an excessive administrative burden on the licensee. The Commission asserts that the underlying purpose of the rule is to investigate a late shipment that may be lost, misdirected, or diverted. Because of the oversight and monitoring of radioactive waste shipments throughout the entire journey from SONGS to the disposal site, it is unlikely that a shipment could be lost, misdirected, or diverted without the knowledge of the carrier or SCE. Furthermore, by extending the elapsed time for receipt acknowledgment to 35 days before requiring investigations and reporting, a reasonable upper limit on shipment duration (based on historical analysis) is still maintained if a breakdown of normal tracking systems were to occur. Consequently, the Commission finds that there is no hazard to life or property by extending the investigation and reporting time for low-level radioactive waste shipments from 20 days to 35 days for rail and combination truck/rail shipments. Therefore, the Commission concludes that the underlying purpose of 10 CFR Part 20, Appendix G, Section III.E will be met.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption requested by SCE in its January 26, 2004, letter is authorized by law and will not result in undue hazards to life or property. Therefore, the Commission hereby grants SCE an exemption to extend the 20-day investigation and reporting requirements for shipments of low-level radioactive waste, as required by 10 CFR Part 20, Appendix G, Section III.E, to 35 days.

Pursuant to 10 CFR 51.31, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as documented in **Federal Register** notice 69 FR 23229 (April 28, 2004).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 2nd day of June, 2004.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Director, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–13367 Filed 6–14–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 151st meeting on June 22–24, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The Working Group Session on June 22–23 will also be videoconferenced with the Department of Energy offices in Summerlin, Nevada. Contact Carol Hanlon (DOE) for details about the location of that videoconference facility. She can be reached at (702) 794–1324 or via e-mail at *Carol_Hanlon@notes.ymp.gov.*

The schedule for this meeting is as follows:

Tuesday, June 22, 2004

10 a.m.–10:10 a.m.: Opening Statement (Open)—The Chairman will open the meeting and turn it over to the Working Group Chairman.

Working Group: Biosphere Transport of Radionuclides at the Proposed Yucca Mountain High-Level Waste Repository (Open).

10:10 a.m.–11:10 a.m.: Keynote Presentation: ''A New Approach to Modeling Retardation by Sorption at the Field Scale'' (Open)—The Committee will hear a presentation by and hold discussions with a representative of USGS regarding radionuclide transport.

11:10 a.m.–11:45 a.m.: Regulatory Overview of Radionuclide Transport Issues (Open)—The Committee will hear a presentation by and hold discussions with representative of the NRC's Office of Nuclear Material and Safety regarding the regulatory overview of radionuclide transport issues.

1 p.m.–1:45 p.m.: Overview of DOE's Assessment of the Model of Radionuclide Transport (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding DOE's assessment of the model of radionuclide transport.

1:45 p.m.–3:15 p.m.: CNWRA Modeling of Site-Scale Saturated Zone Flow at Yucca Mountain (Open)—The Committee will hear a presentation by a CNWRA representative regarding the modeling of site scale saturated zone flow at Yucca Mountain.

3:30 p.m.–4:15 p.m.: Characteristics of Saturated Zone Transport at Yucca Mountain (Open)—The Committee will hear a presentation by and hold discussions with representatives of DOE regarding the characteristics of saturated zone transport at Yucca Mountain.

4:15 p.m.–5:15 p.m.: Public Comments (Open)—The Committee will hear comments from the public.

Wednesday, June 23, 2004

Working Group: Geosphere Transport of Radionuclides at the Proposed Yucca Mountain High-Level Waste Repository—Continued (Open).

9 a.m.–9:05 a.m.: Opening Statement (Open)—The Working Group Chairman will make opening remarks regarding the conduct of today's sessions.

9:05 a.m.–10:05 a.m.: NRC's Performance Assessment and Risk Perspective (Open)—The Committee will hear presentations by and hold discussions with the Nuclear Material Safety and Safeguards representative regarding NRC's performance assessment and risk perspective.

10:20 a.m.–12:45 p.m.: Presentations by Representatives of the State of Nevada, Nye County, and the Electric Power Research Institute. (Open)—The Committee will hear presentations by stakeholder organizations.

2 p.m.–3 p.m.: Working Group Roundtable Panel Discussion (Open).

3 p.m.–4 p.m.: Panel and Committee Summary Discussion (Open).

4 p.m.–4:30 p.m.: Public Comments (Open).

4:30 p.m.–4:35 p.m.: Closing Comments by the Working Group Chairman (Open).

4:35 p.m.–5:15 p.m.: Discussion of ACNW Letter Report (Open)—The Committee will outline the principal points to be included in a potential letter report resulting from these Working Group sessions.

Thursday, June 24, 2004

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10 a.m.: DOE Response to NRC Independent Evaluation of DOE Documents Supporting the Yucca Mountain License Application (YMLA) (Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding their response to the NRC's April 10, 2004 letter to M. Chu, DOE, regarding that evaluation by NRC of the documents intended to support the YMLA.

10:15 a.m.–12:30 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss potential ACNW reports on matters discussed during this meeting. It may also discuss possible reports on matters discussed during prior meetings.

1:30 p.m.–2:45 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will finalize its viewgraphs for the proposed July 21, 2004 meeting with the NRC Commissioners.

2:45 p.m.–3 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 ACNW meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59643). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Special Assistant (Telephone 301–415–6805), between 7:30 a.m. and 4 p.m. e.t., as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the

meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW 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).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: June 8, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–13365 Filed 6–14–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Power Company, Yankee Atomic Power Station (ROWE); Notice of Public Meeting on the License Termination Plan

The Nuclear Regulatory Commission (NRC) is providing notice that the NRC staff will conduct a meeting to discuss and accept public comments on the Yankee (Rowe) Atomic Power Station (Yankee-Rowe) License Termination Plan (LTP) on Thursday, June 24, 2004, at 7 p.m. at Mohawk Trail Regional High School, 26 Ashfield Road, Shelborne Falls, Massachusetts.

Yankee Atomic Electric Company (YAEC, or the licensee) informed the NRC by letter dated February 27, 1992, that Yankee-Rowe was permanently shut down and that decommissioning would commence. YAEC submitted a decommissioning plan on December 20, 1993, which included an environmental report. The decommissioning plan was approved by Order on February 14, 1995, and the plant is undergoing dismantlement under 10 CFR 50.59.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. YAEC submitted the proposed LTP for Yankee-Rowe by applications dated November 24, 2003, December 10, 2003, December 16, 2003, January 19, 2004, January 20, 2004, February 2, 2004, February 10, 2004, and March 4, 2004. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the Yankee-Rowe LTP, will hold a public meeting, and will accept comments from affected parties.

An electronic version of the Yankee-Rowe LTP may be viewed through the NRC ADAMS system at accession numbers ML033450398, ML033530147, ML041110261, ML040280024, ML040280028, ML040280031, ML040280036, ML040280140, ML040330777, ML040420388, ML041100639, and ML040690034, or at the Yankee Atomic Power Company site closure Web site, *http://www.yankee.com/siteclosure/index.htm.*

Comments or questions regarding the Yankee-Rowe LTP or the public meeting may be addressed to Mr. John B. Hickman, Mail Stop T–7–F27, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3017 or via e-mail *jbh@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of June 2004.

For the Nuclear Regulatory Commission.

Claudia Craig,

Chief, Reactor Decommissioning Section, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–13366 Filed 6–14–04; 8:45 am]

BILLING 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 14, 21, 28, July 5, 12, 19, 2004.

PLACE: Commissioners' Conference Room, 11556 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 14, 2004

There are no meetings scheduled for the Week of June 14, 2004.

Week of June 21, 2004—Tentative

There are no meetings scheduled for the Week of June 21, 2004.

Week of June 28, 2004—Tentative

There are no meetings scheduled for the Week of June 28, 2004.

Week of July 5, 2004—Tentative

There are no meetings scheduled for the Week of July 5, 2004.

Week of July 12, 2004—Tentative

Tuesday, July 13, 2004

2:15 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of July 19, 2004—Tentative

Wednesday, July 21, 2004

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw.@nrc.gov*.

Dated: June 9, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–13521 Filed 6–10–04; 9:35 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 2004. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 2004 is 5.26 percent (*i.e.*, 85 percent of the 6.19 percent composite corporate bond rate for May 2004 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 2003 and June 2004. Note that the required interest rates for premium payment years beginning in July through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002, and that the required interest rates for premium payment years beginning in January through June 2004 were determined under the Pension Funding Equity Act of 2004.

For premium payment years beginning in:	The required interest rate is:
July 2003*	4.37
August 2003*	4.93
September 2003*	5.31
October 2003*	5.14
November 2003*	5.16
December 2003*	5.12
January 2004**	4.94
February 2004**	4.83
March 2004**	4.79
April 2004**	4.62
May 2004**	4.98
June 2004**	5.26

*The required interest rates for premium payment years beginning in July through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002.

**The required interest rates for premium payment years beginning in January through June 2004 were determined under the Pension Funding Equity Act of 2004.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of June, 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–13486 Filed 6–14–04; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Change to the Retirement Plan for Manually Set Postage Meters

AGENCY: Postal Service.

ACTION: Notice of proposed change to plan with request for comments.

SUMMARY: The Postal Service proposes to revise the Retirement Plan for Manually Set Postage Meters, published in the **Federal Register** on December 13, 2000, for meters with lease expiration dates on or after October 1, 2004. The proposed retirement date for these manually set electronic meters will be May 31, 2005. The Postal Service will set no electronic manually set meters after February 28, 2005.

DATES: Submit comments on or before July 15, 2004.

ADDRESSES: Mail or deliver written comments on this proposal to the Manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, VA 22209–6370. Copies of all written comments will be available at the address in this section for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne A. Wilkerson, manager of Postage Technology Management, at 703–292–3691 or by fax at 703–292–4073.

SUPPLEMENTARY INFORMATION:

Proposed Changes

The Retirement Plan for Manually Set Postage Meters, published in the **Federal Register** on December 13, 2000 (65 FR 77934), specified that a manually set electronic meter could be used until the end of the calendar quarter following the quarter in which the lease expires, at which time the meter must be retired and withdrawn from service. However, the Postal Service is upgrading the systems used to process point of sale transactions in local Post Offices™. Given the limited number of active manually set meters that will be in service after January 1, 2005 (fewer than 200), the Postal Service cannot justify the cost of including the associated transactions in the development of the new system. Therefore, the Postal Service proposes to retire all manually set electronic meters from service, effective May 31, 2005. The proposed change will affect fewer than 200 meters.

The Proposed Revised Plan

The Postal Service retirement date for manually set electronic meters with lease expiration dates on or after October 1, 2004, will be May 31, 2005. The Postal Service will set no electronic manually set meters after February 28, 2005. Anyone in possession of a manually set meter must return it to the meter provider on or before May 31, 2005. The meter provider will withdraw the meter from service.

Effective August 1, 2004, no manually set meter in service may be replaced by another manually set meter, even when the meter malfunctions, and no manually set meter may be relocated to a different licensing Post Office.

Any manually set electronic postage meter that is capable of remote meter setting must be either converted to remote meter setting or retired from service and returned to the meter provider. The function that allows manual setting must be disabled.

The manager of Postage Technology Management, Postal Service Headquarters, will send official notification to those affected users with an explanation of this plan. No other correspondence is official. The manager of Postage Technology Management reserves the right to review manufacturer correspondence to these meter users prior to its distribution.

A final plan will be published after the Postal Service has received and reviewed all interested parties' comments.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–13348 Filed 6–14–04; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Unemployment Benefits and Employment Service, OMB 3220–0022. Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days).

Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325.

The RRB utilizes the following forms to collect the information necessary to pay unemployment benefits: Form UI–1 (or its Internet equivalent, Form UI–1 (Internet)), Application for Unemployment Benefits and Employment Service, is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 or UI–1 (Internet) also registers an unemployment claimant for the RRB's employment service. The RRB proposes no changes to Form UI–1 or UI–1 (Internet).

The RRB also utilizes Form UI–3, Claim for Unemployment Benefits, for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days. The RRB proposes minor editorial changes to UI–3.

The RRB is proposing the implementation of an Internet equivalent of Form UI–3, Claim for Unemployment Benefits, as an addition to the information collection. The information collected on proposed Form UI–3 (Internet), Claim for Unemployment Benefits, will essentially mirror what is requested on Form UI–3. However, the UI–3 (Internet) will take advantage of opportunities to electronically edit and skip unnecessary items as well as give respondents the opportunity to change/modify their Direct Deposit Information.

Completion of Forms UI–1, UI–1 (Internet), UI–3 and the proposed UI–3 (Internet) is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB estimates that approximately 11,200 Form UI–1's (9700 paper and 1,500 Internet) will be filed annually. Completion time for Form UI–1 and UI–1 (Internet) is estimated at 10 minutes. The RRB estimates that approximately 116,000 Form UI–3's (92,800 manual and 23,200 Internet) will be filed annually. Completion time for Form UI–3 and the proposed UI–3 (Internet) is estimated at 6 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J.

Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–13346 Filed 6–14–04; 8:45 am]

BILLING CODE 7905–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology; Workshop on Federal-State Research and Development Cooperation

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

Dates and Place: June 29, 2004, Cleveland, OH. The meeting will be held in Ballroom C of the Intercontinental Hotel and Conference Center, 9801 Carnegie Avenue, Cleveland, OH 44106.

Type of Meeting: Open. Further details on the agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday June 29, 2004, at approximately 8:30 a.m. The PCAST will hold a Workshop on Federal-State Research and Development Cooperation. The Workshop will examine States' roles in the Nation-wide scientific and technological infrastructure with a special emphasis on Federal-State cooperation. It is intended: (1) To develop recommendations to the President on where Federal improvements can be made, and (2) to distill and showcase practical suggestions for all States to improve their pursuit of successful innovation and economic growth.

Speakers will include Federal officials, other States' science and technology representatives, and Ohio higher education and business representatives.

The Workshop will end at approximately 5 p.m. Additional information on the agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Public Comments: There will be time throughout the Workshop for attendees to join in the discussion of the above agenda items. *This public comment time is designed for substantive commentary on the Workshop's topics, not for business marketing purposes.* Written comments are also welcome at any time prior to or following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–6070, or fax your comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please call Stan Sokul at (202) 456–6070, prior to 3 p.m. on Friday, June 25, 2004. Information will also be available at the PCAST web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Ann Mazur,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 04–13593 Filed 6–14–04; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 19b–5 and Form PILOT; SEC File No. 270–448; OMB Control No. 3235–0507.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19b–5 provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Securities Exchange Act of 1934 (''Act'') to self-regulatory organizations (''SROs'') wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of the pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Act in order to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5.

The respondents to the collection of information are SROs, as defined by the Act, including national securities exchanges and national securities associations.

Ten respondents file an average total of 6 initial reports, 24 quarterly reports, and 12 amendments per year, with an estimated total annual response burden of 252 hours. At an average hourly cost of $51.71, the aggregate related cost of compliance with Rule 19b–5 for all respondents is $13,032 per year (252 burden hours multiplied by $51.71/hour = $13,032).

Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13416 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 302; SEC File No. 270–453; OMB Control No. 3235–0510.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 302 of Regulation ATS describes the recordkeeping requirements for alternative trading systems that are not national securities exchanges. Under Rule 302, alternative trading systems are required to make a record of subscribers to the alternative trading system, daily summaries of trading in the alternative trading system and time-sequenced records of order information in the alternative trading system.

The information required to be collected under the Rule should increase the abilities of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. If the information is not collected or is collected less frequently, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will spend approximately 1,800 hours per year to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $155,772.00 per year (1,800 burden hours multiplied by $86.54/hour).

Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Financial Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13417 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15a–6; SEC File No. 270–0329; OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities.

In general, the records to be maintained under Rule 15a–6 must be kept for the applicable time periods as set forth in Rule 17a–4 (17 CFR 240.17a–4) under the Exchange Act or, with respect to the consents to service of process, for a period of not less than six years after the applicable person ceases engaging in U.S. securities activities. Reliance on the exemption set forth in Rule 15a–6 is voluntary, but if a foreign broker-dealer elects to rely on such exemption, the collection of information described therein is mandatory. The collection does not involve confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid control number.

It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. At an average cost per hour of approximately $100, the resultant total cost of compliance for the respondents is $600,000 per year (2,000 entities × 3 hours/entity × $100/hour = $600,000).

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

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an e-mail to: *David_Rostker@omb.eop.gov.,* and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 4, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13418 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 155; OMB Control No. 3235–0549; SEC File No. 270–492;
Rule 477; OMB Control No. 3235–0550; SEC File No. 270–493.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 155 (OMB Control No. 3235–0549; SEC File No. 270–492) under the Securities Act of 1933 provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offering in either case. Rule 155 requires any prospectus filed as a part of a registration statement after a private offering to include disclosure regarding abandonment of the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. The likely respondents will be companies. All information submitted to the Commission is available to the public for review. Companies only need to satisfy the Rule 155 information requirements if they wish to take advantage of the rule's safe harbors. The Rule 155 information is required only on occasion. We estimate that 600 issuers will file Rule 155 submissions annually at an estimated 4 hours per response. We also estimate that 50% of the 2,400 total annual burden hours (1,200 burden hours) would be prepared by the company. We estimate that the remaining 50% of the burden hours is prepared by outside counsel.

Securities Act Rule 477 (OMB 3235–0550; SEC File No. 270–493) sets forth procedures for withdrawing a registration statement or any amendment or exhibits thereto. The rule provides that if a registrant applies for withdrawal in anticipation of reliance on Rule 155's registered-to-private safe harbor, the registrant must state in the withdrawal application that the registrant plans to undertake a subsequent private offering in reliance on the rule. Without this statement, the Commission would not be able to monitor issuers' reliance on, and compliance with, Rule 155(c). The likely respondents will be companies. All information submitted to the Commission under Rule 477 is available to the public for review. Information provided under Rule 477 is mandatory. The information is required on occasion. It is estimated that 300 issuers will file Rule 477 submissions annually at an estimated one hour per response for a total annual burden of 300 hours. We estimate that 100% of the reporting burden is prepared by the issuer.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission at: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13419 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 303; SEC File No. 270–450; OMB Control No. 3235–0505.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 303 of Regulation ATS describes the record preservation requirements for alternative trading systems that are not national securities exchanges.

Alternative trading systems that register as broker-dealers, comply with Regulation ATS and meet certain volume thresholds are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading

summaries and order information. Such alternative trading systems are also required to preserve records of any notices communicated to subscribers, a copy of the system's standards for granting access to trading and any documents generated in the course of complying with the capacity, integrity and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS. Rule 303 also describes how such records must be kept and how long they must be preserved.

The information contained in the records required to be preserved by the Rule will be used by examiners and other representatives of the Commission, State securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. Without the data required by the proposed Rule, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will spend approximately 200 hours per year (50 respondents at 4 burden hours/respondent) to comply with the record preservation requirements of Rule 303. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $17,308.00 per year (200 burden hours multiplied by $86.54/hour).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Financial Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13420 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49821; File No. SR–NYSE–2004–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by New York Stock Exchange Relating to NYSE Listed Company Manual Section 102.04 (Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940—Business Development Companies)

June 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 28, 2004, the NYSE amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to NYSE Listed Company Manual Section 102.04 (Minimum Numerical Standards—Closed-end Management Investment Companies Registered Under the Investment Company Act of 1940) would enable the Exchange to list business development companies, which are closed-end management investment companies permitted by statute to not register under the Investment Company Act of 1940 (the ''Investment Company Act'').[4] The text of the proposed rule change is below. Proposed new language is *italicized*; deletions are [bracketed].

* * * * *

Listed Company Manual

* * * * *

102.00 Domestic Companies

* * * * *

102.04 Minimum Numerical Standards—Closed-End Management Investment Companies [Registered Under the Investment Company Act of 1940]

A. The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a ''Fund'') that meets the requirements of Paras. 102.01A and 102.01B above, provided that the required market value of publicly held shares shall be $60,000,000 regardless of whether it is an IPO or an existing Fund. Para. 102.01C will not apply.

Notwithstanding the foregoing requirement for market value of publicly held shares of $60,000,000, the Exchange will generally authorize the listing of all the Funds in a group of Funds listed concurrently with a common investment adviser or investment advisers who are ''affiliated persons'', as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended, if:

Total group market value of publicly held shares equals in the aggregate at least $200,000,000;

The group market value of publicly held shares averages at least $45,000,000 per Fund; and

No one Fund in the group has market value of publicly held shares of less than $30,000,000.

B. The Exchange will generally authorize the listing of a closed-end management investment company that has filed an election to be treated as a business development company under the Investment Company Act of 1940 that meets the requirements of Paras. 102.01A and 102.01B above, provided that the required market value of publicly held shares shall be $60,000,000 regardless of whether it is an IPO or an existing business development company, and provided further that the company has a total market capitalization of listed securities

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[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 Nancy J. Sanow, Assistant Director, Commission, dated April 27, 2004 (''Amendment No. 1''). Amendment No. 1 revised the proposed rule text and made corresponding changes to the Form 19b–4 filed by the NYSE. Amendment No. 1 is incorporated into this notice.

[4] 15 U.S.C. 80a–1 *et seq.*

of at least $75,000,000. Para. 102.01C will not apply.

* * * * *

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 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 III 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

Open-end and closed-end funds registered under the Investment Company Act are typically utilized to invest in publicly traded business corporations, but are not typically used for private equity investment, *e.g.* non-public companies.[5] The Exchange states that open-end investment companies (mutual funds) cannot by definition invest to any meaningful extent in private equity given their fundamental need for liquidity due generally to the fact that open-end mutual funds are redeemable.[6] Registered closed-end funds are limited in other ways, with Investment Company Act restrictions on borrowing and on the ability to compensate management with equity being the principal difficulties.

To facilitate public investment in private equity, the Investment Company Act was amended to create a new category of closed-end investment company, known as a business development company (''BDCs''), subject to the Investment Company Act, but not required to register under it.[7] Companies must elect to be treated as a BDC in order to qualify for this treatment and must file a notice to that effect with the Securities and Exchange Commission.[8]

In order to be able to make the election, a company must have a class of equity securities registered under the Act.[9] The NYSE believes that for this reason a BDC will typically seek to be traded on a public market.[10] A number of special provisions of the Investment Company Act apply to BDCs and govern how they conduct their investment business. However, since BDCs are not registered under the Investment Company Act, such companies are required to file the same kind of periodic reports as other registrants under the Act (*e.g.*, Form 10–K and Form 10–Q).[11]

The Exchange has historically required operating companies to have three years of operating history in order to list. Closed-end funds, however, typically list coincident with their establishment under Section 102.04 of the Listed Company Manual, which requires that the funds simply demonstrate at least $60 million in market value of publicly held shares. Under the present language used in Section 102.04, however, the section applies to closed-end funds that are ''registered under the Investment Company Act of 1940.'' Other self-regulatory organizations (''SROs'') currently list and trade BDCs pursuant to listing standards that do not require an operating history.[12]

The Exchange proposes to amend Section 102.04 to specify that it may also be used to list BDCs that meet the $60 million threshold, provided that they also have a total market capitalization of at least $75 million. The Exchange believes that the proposed amendments would create an appropriate financial standard under which to list BDCs.

Pursuant to Rule 10A–3 of the Act,[13] and Section 3 of Sarbanes-Oxley Act of 2002,[14] the Exchange will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act[16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–14 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[5] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[6] *Id.*

[7] 15 U.S.C. 80a–53. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[8] *Id.*

[9] 15 U.S.C. 80a–53(a).

[10] Based on conversations with Commission staff, it is the understanding of the Exchange that at that time approximately 21 BDCs have been listed on national markets. Two BDCs—Allied Capital Corporation and Equus II, Inc.—listed on the Exchange following transfer from Nasdaq had a three-year operating history that permitted them to be listed on the Exchange under existing financial standards applicable to operating companies. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[11] 15 U.S.C. 78m, 78o(d).

[12] *See* NASD Rule 4420(c), Entry Standard 3; Amex Company Guide, § 101(c) and (d), Initial Listing Standards 3 and 4. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[13] 17 CFR 240.10A–3.

[14] *See* Section 3 of Public Law 107–204, 116 Stat. 745 (2002).

[15] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[16] 15 U.S.C. 78f(b)(5).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–14 and should be submitted on or before July 6, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the following reasons, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(f)(5) of the Act and the rules and regulations thereunder. A BDC is a closed-end management investment company that (1) is operated for the purpose of making investments of certain specified types—primarily in private equity through ''eligible portfolio companies,'' [17] (2) as part of its investment in eligible portfolio companies makes available significant managerial assistance to them, and (3) elects to be treated as a BDC. BDCs are closed-end management investment companies that are subject to, but not required to register under, the Investment Company Act.[18] Recently, a number of BDCs are seeking to become listed and traded on national markets.[19]

Under NYSE's current rules, as unregistered closed-end funds, BDCs may be listed and traded only if they satisfy the Exchange's general listing standards for operating companies, which, among other things, require a one- to three-year operating history.[20] The general listing standards for operating companies used by other national markets—and applicable to BDCs—are less restrictive than those of the NYSE, in that they do not require an operating history. Nasdaq's listing standards, for example, permit an operating company to be listed without an operating history, so long as it satisfies a $75 million market capitalization test, a $20 million public float test, and certain other requirements.[21] Amex has comparable listing standards that require either (1) $75 million in market capitalization and a $20 million public float, or (2) $50 million in market capitalization and a $15 million public float, so long as there is at least $4,000,000 in stockholder equity.[22]

In order to accommodate and compete for new BDC listings more effectively, the NYSE proposes to modify its listing standards applicable to BDCs to be more comparable to those of other markets, including Nasdaq and Amex. Specifically, the NYSE would require that all closed-end funds, including BDCs, have a public float of at least $60 million and a total market capitalization of at least $75 million. While the rule change will facilitate listing and trading of BDCs on the NYSE, the Commission believes that the proposal will result in NYSE listing standards that are comparable to, but no less restrictive than, those of competing national markets.[23]

Therefore, after careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[24] In particular, the Commission finds that, in light of the listing standards for BDCs currently used by other national markets that do not require an operating history for BDCs and the competitive need expressed by the Exchange, the proposed rule change is consistent with Section 6(b)(5) of the Act.[25] The Commission thus finds that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act [26] to approve on an accelerated basis the proposed rule change to permit listing and trading of BDCs without an operating history. In its filing, the NYSE states that it expects BDC listing candidates to come to market in the near term. Absent Commission approval of the proposed rule change, the Exchange states that it will be unable to compete for these listings because the listing standards of other SROs do not require an operating history for BDCs, while the Exchange's current listing standards contain such a requirement. For this reason, as discussed generally in this Item IV, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–NYSE–2004–14), is hereby approved on an accelerated basis.[27]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13355 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* 15 U.S.C. 80a–2(a)(46). Eligible portfolio companies are U.S. firms that are not publicly owned and which meet certain other criteria.

[18] BDCs originated as part of the Small Business Investment Incentive Act of 1980. Public Law 96–477, 94 Stat. 2275 (Oct. 21, 1980).

[19] The Commission notes that, to date, 21 BDCs have been listed on national markets. The three of these that are listed on the NYSE—Allied Capital Corporation, MVC Capital, Inc., and Equus II, Inc.—satisfied the NYSE's existing listing standards requiring a one- to three-year operating history.

[20] *See* NYSE Listed Company Manual, Section 102.01C.

[21] *See* NASD Rule 4420(c), Entry Standard 3. The Nasdaq listing standards for operating companies also require that there be a distribution of at least 400 shareholders, 1,100,000 publicly-held shares, and a bid price per share of $5.00 or more.

[22] Amex Company Guide, section 101(c) and (d), Initial Listing Standards 3 and 4. All Amex listed companies are required to meet certain distribution thresholds. In general, all Amex listed companies, including registered closed-end funds, require either (1) 1,000,000 publicly-held shares and 400 shareholders, (2) 500,000 publicly-held shares and 800 shareholders, or (3) 500,000 publicly-held shares, 400 shareholders, and average daily trading volume of 2,000 shares for the preceding six months. *See* Amex Company Guide, § 101(f).

[23] The Commission notes that it is currently reviewing the listing and other regulatory standards applicable to BDCs, registered closed-end funds, and non-conventional investments to determine whether the unique characteristics and risks of these products are adequately addressed. Depending on the results of that review, the Commission, among other things, may require modifications to the listing standards of the NYSE and other markets that are applicable to BDCs.

[24] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49804; File No. SR–NYSE–2004–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listed Company Fee Exclusion for NYSEnet SM Data

June 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. On June 1, 2004, the NYSE amended the proposed rule change.[3] The NYSE has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to improve an information service that it provides to its listed companies (''NYSEnet'') by adding certain Broker Volume SM, Liquidity Quote SM and OpenBook SM information to the service.

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 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

NYSEnet is a web-based information service that the Exchange makes available to NYSE-listed companies. It delivers to a listed company information regarding the performance of the company's stock, including market data and real-time quotes relating to that stock, characteristics of the order flow for the stock, global share ownership information, and the like.

The Exchange believes that NYSEnet provides a valuable service to its listed companies. According to the Exchange, NYSEnet provides NYSE-listed companies with insight into market behavior that enables the companies to make decisions related to equity and capital, up-to-the-minute information regarding stock trading and market conditions, the ability to analyze reports on the performance of the stock of the company relative to its peers, information and analysis that facilitate the companies' ability to build a targeted investor relations strategy, and tools that enable the companies to manage strategically their investor relations and corporate events.

To make the service even more attractive to listed companies, the Exchange does not charge its listed companies for receipt of NYSEnet. Insofar as NYSEnet includes fee-liable market data, such as consolidated prices and quotes in the company's stock that the markets make available jointly pursuant to the CTA Plan and the CQ Plan, NYSE pays the applicable fees to the Consolidated Tape Association, an association comprised of all the registered securities exchanges and the NASD (''CTA''), on behalf of its listed companies.

The Exchange has now determined to enhance the NYSEnet service by adding to the information that NYSEnet makes available to a NYSE-listed company Broker Volume, Liquidity Quote and OpenBook information relating to the company's stock.

The Exchange's Broker Volume service provides subscribers with Exchange-prepared reports of broker share volume information. The Exchange is proposing to have the NYSEnet service provide a listed company with reports of broker share volume only in the listed company's stock.

The Exchange's Liquidity Quote service provides subscribers with depth-of-market information, including aggregated Exchange trading interest at a specific price interval below the best bid or above the best offer. The Exchange is proposing to have the NYSEnet service provide a listed company with Liquidity Quote information relating only to the company's stock.

The Exchange's OpenBook service provides subscribers with information regarding limit orders that Exchange specialists have received at prices at or below the best bid or at or above the best offer. The Exchange is proposing to have the NYSEnet service provide a listed company with OpenBook information relating only to limit orders for the company's stock.

After it has added Broker Volume, Liquidity Quote and OpenBook information to NYSEnet, the Exchange wishes to continue to provide the NYSEnet service to its listed companies without charge. The Commission has approved fees that the Exchange charges for the receipt of Broker Volume, Liquidity Quote and OpenBook services (''Exchange Fees'').[6] As it does for other fee-liable information that the Exchange provides to listed companies through NYSEnet, the Exchange wishes to pay the applicable Exchange Fees on behalf of its listed companies.

Because the Exchange Fees for these services are imposed by and paid to the Exchange itself,[7] the Exchange's actual payment of those fees would mean that one department at the Exchange (Corporate Listings and Compliance) would merely be paying another department at the Exchange (Market Data) for a listed company's receipt of information through NYSEnet. As a consequence, the Exchange would deem that the fees have been paid on behalf of the listed companies for their receipt of listed company-related Broker Volume, Liquidity Quote and OpenBook information through the NYSEnet service.

By relieving its listed companies from the obligation to pay those fees for the

[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 Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 28, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange restated the proposed rule change in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] For Broker Volume, *see* Securities Exchange Act Release Nos. 46847 (November 19, 2002); 67 FR 70799 (November 26, 2002) (SR–NYSE–2002–61) and 48060 (June 19, 2003); 68 FR 37889 (June 25, 2003) (SR–NYSE–2003–11); for Liquidity Quote, *see* Securities Exchange Act Release No. 47614 (April 2, 2003); 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55); for OpenBook, *see* Securities Exchange Act Release No. 44318 (December 7, 2001); 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42).

[7] This contrasts with the circumstances under which NYSE pays the fees for the provision to listed companies of real-time quote and last sale information, where the fees are ultimately paid not to the Exchange itself but to the CTA.

company-related information that they receive through NYSEnet, the Exchange believes that it would be enhancing the value of the service that it provides to its listed companies. In light of the listing fees that those companies pay to the Exchange, the Exchange believes that it would be reasonable for the Exchange to bear the fees involved, as it does in the case of the CTA fees described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that Section 6(b)(4) requires that the exchange's rules provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change would not impose any burden on competition that is not necessary or appropriate in the 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 regarding the proposed rule change. 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to distribute the expanded NYSEnet information to listed companies as soon as possible. The Exchange represents that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange notes that the proposed rule change merely notes that specified services are being provided to listed companies for no additional fee beyond those that they already pay in annual listing fees to the Exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to provide NYSE-listed companies with the expanded NYSEnet information and thereby enhance the value of services that the NYSE provides to its listed companies.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–25 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–25 and should be submitted on or before July 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13356 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 1, 2004, the date on which the NYSE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[13] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49834; File No. SR–OCC–2004–06]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Index Option Expiration Date Exercise Procedures

June 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 19, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

change described in items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC is seeking to amend its Rule 1804, which governs expiration date exercise procedures for index 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, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to modify OCC's Rule 1804, which governs expiration date exercise procedures for index options, to enable OCC to clear and settle European-style options on various volatility indexes (''VIX Options'') proposed to be listed by the Chicago Board Options Exchange (''CBOE'') that will expire on Wednesdays rather than on Saturdays. OCC is also amending Rule 1804 to simplify its structure.

CBOE's rule filing with respect to VIX Options provide that VIX Options will expire on Wednesdays.[3] However, as currently drafted, OCC Rule 1804 contemplates that only quarterly index options (''QIX Options'') and flexibly structured index options (''Flex Options'') will expire on a business day. This proposed rule change would accommodate VIX Options by amending Rule 1804 to remove descriptions of the day of the week on which certain options expire and make clear that all index options other than Flex Options have the same expiration date exercise procedure regardless of their expiration date.

OCC Rule 1804(b) governs QIX Options ''expiring on a business day.'' Rule 1804(b) was adopted in April 1993.[4] At that time, OCC ran both a preliminary and a final report for clearing members to use in exercise-by-exception (''ex-by-ex'') processing with respect to all options except for European-style treasury options that expired on a business day. Under OCC Rule 806, clearing members received only one expiration exercise report for European-style treasury options with business day expirations because OCC was not able to process both a preliminary and a final expiration exercise report on a business day. Because QIX Options also expire on a business day, Rule 1804(b) was adopted to state that QIX Options would be settled pursuant to the single expiration exercise report procedures set forth in OCC Rule 806, as modified by Rule 1804(b).

In 1995, OCC revised its expiration date exercise procedures to do away with the preliminary and final expiration exercise reports and instead to provide only one expiration exercise report for all expiring options.[5] As part of that change, OCC eliminated Rule 806, as it was no longer necessary to provide separately for a single expiration report for certain options expiring on a business day because all options were to have a single expiration exercise report. With the move from two expiration exercise reports to one, Rule 1804(b) became the same in substance to Rule 1804(a).

The changes OCC now proposes to Rule 1804 would eliminate the redundancies in that rule and eliminate references to Saturday versus business day expirations. Current Rule 1804(a) is eliminated as redundant because revised Rules 1804(b) and (c) clearly establish the ex-by-ex thresholds for index options. It is unnecessary to retain the definition of the term ''closing price'' in Rule 1804(a)(2) with respect to index options because revised Rule 1804(a)(1) relies instead on the term ''exercise settlement amount.'' Exercise settlement amount is defined in Article XVII of OCC's By-Laws. Furthermore, the procedures that may be followed by OCC in the event of the unavailability of an index value are being eliminated from current Rule 1804(a)(2) because they are set forth in more detail in Article XVII, Section 4 of the By-Laws, which is cross-referenced in new Interpretation and Policy .02. Existing Rule 1804(c), which provides for ''true'' automatic exercise (*i.e.*, no exception procedure) for Flex Options is retained without substantive modification. Finally, simplifying and conforming changes are being made in Rule 801 and the Interpretations and Policies to Rule 1804.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because they are designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments and to perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule effects a change in an existing service of OCC that does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which OCC is responsible and does not significantly affect the respective rights or obligations of OCC or persons using the service. OCC currently uses the same expiration date procedures for options that expire on business days and on Saturdays. This proposed rule change merely clarifies this point, eliminates certain redundancies in Rule 1804, and removes language stating that only QIX

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (File No. SR–CBOE–2003–40).

[4] Securities Exchange Act Release No. 32244 (April 29, 1993), 58 FR 27005 (File No. SR–CBOE–92–27).

[5] Securities Exchange Act Release No. 36385 (October 24, 1995), 60 FR 54557 (File No. SR–OCC–95–10).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

Options and FLEX Options expire on a business day. The proposed rule change does not substantively affect the manner in which OCC safeguards funds or securities or the rights and obligations of its clearing members. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2004–06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–06 and should be submitted on or before July 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13414 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49818; File No. SR–PCX–2004–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Extend a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below $20 at One-Point Intervals Until August 4, 2004

June 4, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX filed Amendment No. 1 to the proposal on June 4, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to extend its pilot program under which it lists options on selected stocks trading below $20 at $1 strike price intervals (''$1 Pilot Program'') until August 4, 2004. The text of the proposed rule change is available at the Office of the Secretary, PCX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX 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 proposal is to extend PCX's $1 Pilot Program until August 4, 2004. The current $1 Pilot Program expires on June 5, 2004. PCX states that its member firms have expressed a continued interest in listing additional strike prices on low priced stocks so that they can provide their customers with greater flexibility in their investment choices. For this reason, PCX proposes to extend the $1 Pilot Program. PCX notes that all of the issues eligible to be included in the $1 Pilot Program, the procedures for adding $1 strike intervals, the procedures for phasing out $2.50 strike price intervals, the prohibition against listing long-term options (also known as ''LEAPS'') in equity option classes at $1 strike price intervals, the procedures for adding expiration months and the procedures for deleting $1 strike intervals will all remain the same.[4]

2. Statutory Basis

PCX believes that the continuation of $1 strike prices will stimulate customer

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 3, 2004 (''Amendment No. 1''). In Amendment No. 1, PCX replaced in its entirety the proposed rule text it attached as Exhibit A to its initial Form 19b–4.

[4] The Commission approved the $1 Pilot Program on June 17, 2003. *See* Securities Exchange Act Release No. 48045 (June 17, 2003); 68 FR 37549 (June 24, 2003) (''Pilot Program Approval Order''). Consistent with the Pilot Program Approval Order, PCX represents that it will file a report with the Commission which shall include: (1) Data and written analysis on the open interest and trading volume for options (at all strike intervals) selected for the $1 Pilot Program; (2) delisted option series (for all strike price intervals) selected for the $1 Pilot Program; (3) an assessment of the appropriateness of the $1 strike price intervals for the options the PCX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the $1 Pilot Program and how the PCX addressed them; and (7) any additional information that would help assess the operation of the $1 Pilot Program.

interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that continuation of $1 strike prices will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, PCX believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, PCX believes the proposed rule change is consistent with the requirements under section 6(b)(5)[6] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for 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

PCX does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PCX has not solicited, and does not intend to solicit, comments on this proposed rule change. PCX has not received any unsolicited written comments from its members of other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4[8] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and PCX has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.[9]

Under Rule 19b–4(f)(6)(iii) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and PCX is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. PCX has requested that the Commission waive 30-day operative delay so that the $1 Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay,[11] and, therefore, the proposal is effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-PCX–2004–39 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78(f)(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on June 4, 2004, the date PCX filed Amendment No. 1.

[10] 17 CFR 240.19b-4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] In its Pilot Program Approval Order, the Commission stated that if PCX proposed to (1) extend the $1 Pilot Program beyond June 5, 2004; (2) expand the number of options eligible for inclusion in the $1 Pilot Program; or (3) seek permanent approval of the $1 Pilot Program, the PCX would be required to submit a Pilot Program Report to the Commission along with the filing of such proposal. The Pilot Program Approval Order required the PCX to submit a proposed rule change with the Pilot Program Report at least 60 days prior to the expiration of the $1 Pilot Program. Because PCX has failed to provide a Pilot Program Report to the Commission containing the analysis and assessment required by the Pilot Program Approval Order, the Commission is extending PCX $1 Pilot Program only until August 4, 2004.

If PCX proposes to (1) extend the $1 Pilot Program beyond August 4, 2004; (2) expand the number of options eligible for inclusion in the $1 Pilot Program; or (3) seek permanent approval of the $1 Pilot Program, it must submit a Pilot Program Report to the Commission along with the filing of such proposal by July 6, 2005. The Pilot Program Report must cover the entire time the $1 Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the $1 Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the PCX selected for the $1 Pilot Program; (4) an assessment of the impact of the $1 Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the $1 Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the $1 Pilot Program and how the PCX addressed them; and (7) any additional information that would help to assess the operation of the $1 Pilot Program. The Commission notes that the submission of a satisfactory Pilot Program Report along with a proposed rule change to extend, expand, or permanently approve the $1 Pilot Program by July 6, 2004 is a condition precedent to the future operation of PCX's $1 Pilot Program.

available publicly. All submissions should refer to File Number SR–PCX–2004–39 and should be submitted on or before July 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13354 Filed 6–14–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49832; File No. SR–Phlx–2003–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's New Electronic Trading Platform, ''Phlx XL''

June 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 9, 2003, December 11, 2003, January 28, 2004, and May 11, 2004, the Exchange filed Amendments No. 1, 2, 3, and 4, respectively, to the proposed rule change.[3] On June 4, 2004, the Exchange filed Amendment No. 5 to the proposed rule change.[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 Phlx proposes to adopt new rules for the implementation of its new electronic trading platform for options known as ''Phlx XL.'' The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Phlx, at the Commission, and on the Commission's Web site, *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. 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 purpose of the proposed rule change is to adopt rules regarding the Exchange's new electronic trading platform, Phlx XL. The proposal would permit certain on-floor Exchange members, as described below, to submit streaming electronic option quotations via electronic interface with the Exchange's Automated Options Market (''AUTOM'') System.[5]

Implementation and Deployment

The Exchange represents that it will begin the initial rollout of Phlx XL on an issue-by-issue basis, beginning with the first of approximately 10 issues included in the initial rollout not later than 10 days following the Commission's approval of the proposed rules applicable to Phlx XL. The Exchange plans to expand the deployment of Phlx XL to include the Top 120 equity options within 8 months of the initial deployment, and the Exchange expects to roll out Phlx XL for all options floor wide not later than December 31, 2005.[6]

Streaming Quote Options

Proposed Phlx Rule 1080(k) would provide that the Exchange's Options Committee[7] may, on an issue-by-issue basis, determine the specific issues in which Streaming Quote Traders (''SQTs''), as defined in Phlx Rule 1014(b)(ii), may generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device. Such issues would be known as ''Streaming Quote Options.''

Streaming Quote Traders and Quoting Requirements

The proposed rules would provide that the term Registered Options Trader (''ROT'') would include an SQT. An SQT would be defined in proposed Phlx Rule 1014(b)(ii) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. With respect to Streaming Quote Options (defined below) to which an SQT is assigned, such SQT would be responsible to quote continuous, two-

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 9, 2004 (''Amendment No. 1''); December 11, 2003 (''Amendment No. 2''); January 28, 2004 (''Amendment No. 3''); and May 10, 2004, replacing Form 19b–4 in its entirety (''Amendment No. 4'').

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated June 3, 2004 (''Amendment No. 5''). In Amendment No. 5, the Exchange (i) amended certain proposed rules, (ii) removed a sentence from the purpose section of the notice, and (iii) committed to: (A) correct any technical drafting and/or typographic errors or omissions contained in the proposed rule change, and (B) provide a more detailed description of the procedures by which the opening price on Phlx XL would be established.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO–X, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Phlx Rule 1080.

[6] In January 2004, the Exchange submitted a proposal to modify the timing of the deployment of the ROT Access feature of its Automated Options Market (AUTOM) system in light of the Exchange's proposal to introduce Phlx XL. *See* Securities Exchange Act Release No. 49151 (January 29, 2004), 69 FR 6010 (February 9, 2004) (SR–Phlx–2004–01). Specifically, if Phlx XL is not deployed floor-wide for all options by April 30, 2005, the Exchange has committed to ensure that, as of that date, the AUTOM system automatically executes eligible incoming orders in options that are not then Streaming Quote Options (as defined below) against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM, as described in Commentary .04 to Phlx Rule 1080.

[7] The Options Committee has general supervision of the dealings of members on the equity and index options trading floor, and of the premises of the exchange facility immediately adjacent thereto. It is responsible to make or recommend for adoption, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the equity and index options trading floor. The Committee has supervision of the activities on the equity and index options trading floor of specialists, assistant specialists, registered option traders, floor brokers, and other types of market-makers. *See* Exchange By-Law Article X, Section 10–19.

sided markets in not less than 60% of the series in each Streaming Quote Option (as defined in proposed Phlx Rule 1080(k)) in which such SQT is assigned. The specialist assigned in a Streaming Quote Option, however, would be required to quote continuous, two-sided markets in 100% of the series in each assigned option.[8] ROTs who are not SQTs would continue to be responsible to fulfill all of the requirements for ROTs set forth in Phlx Rule 1014.

Proposed Phlx Rule 1014(b)(ii)(B) would set forth the minimum quotation size for specialists and SQTs in Streaming Quote Options traded on Phlx XL. Specifically, the proposed rule would provide that, during a six-month period commencing on the date of the initial deployment of Phlx XL (the ''initial six-month period''), the specialist and any SQT assigned in a Streaming Quote Option would be permitted temporarily to submit electronic quotations with a size of fewer than 10 contracts for a period of 60 days after such option begins trading as a Streaming Quote Option. Beginning on the sixty-first day after such option begins trading as a Streaming Quote Option, SQTs and the specialist assigned in such Streaming Quote Option would be required to submit electronic quotations with a size of not less than 10 contracts.

Subsequently, during a six-month period commencing on the first day following the expiration of the initial six-month period, the specialist and any SQT assigned in a Streaming Quote Option would be permitted to submit electronic quotations with a size of fewer than 10 contracts for a period of 30 days after such option begins trading as a Streaming Quote Option. Beginning on the thirty-first day after such option begins trading as a Streaming Quote Option, SQTs and the specialist assigned in such Streaming Quote Option would be required to submit electronic quotations with a size of not less than 10 contracts.

Thereafter, the specialist and any SQT assigned in a Streaming Quote Option that is newly listed and deployed on Phlx XL would be required to submit electronic quotations with a size of not less than 10 contracts beginning on the date on which such Streaming Quote Option begins trading on Phlx XL. The purpose of this provision is to enable SQTs and the specialist in a Streaming Quote Option, during the initial stages of deployment of Phlx XL, to quote with a size of less than ten contracts so that such SQTs and specialists may determine over this period of time that their quotation systems and models function properly and reliably, and to make necessary changes, if any, during this time in order to manage their risk while providing fair and orderly markets in the Streaming Quote Option. The ten-contract minimum quotation size obligation would apply only to an SQT or specialist's undecremented quote.[9] An SQT would be permitted to submit electronic quotations only while such SQT is physically present on the floor of the Exchange.

Under Phlx XL, SQTs and the specialist would be able to quote verbally in open outcry in response to a request for a market, or to quote electronically (or submit orders electronically) by use of an Exchange-approved quoting device.

Non-SQT ROTs trading Streaming Quote Options would be required to quote verbally in response to a request for a market, and would continue to have the ability to place limit orders electronically directly onto the limit order book through electronic interface with AUTOM.[10] A non-SQT ROT would not, however, have the same continuous, electronic quoting requirements as an SQT trading the same Streaming Quote Option, unless such non-SQT ROT would trade in excess of a specified number of contracts electronically (*i.e.*, by way of placing limit orders on the book that are executed via Book Match or Book Sweep, as described more fully below) in a given calendar quarter.

With respect to non-SQT ROTs in Streaming Quote Options, the proposed rule would require that, during the initial six-month period, for a period of sixty days commencing immediately after an option begins trading as a Streaming Quote Option, such non-SQT ROTs may provide such quotations with a size of fewer than 10 contracts. Beginning on the sixty-first day after such option begins trading as a Streaming Quote Option, such quotations would be required to be for a size of at least 10 contracts. During a six month period commencing on the first day following the expiration of the initial six-month period, such non-SQT ROTs may provide such quotations with a size of fewer than 10 contracts for a period of thirty days after such option begins trading as a Streaming Quote Option. Beginning on the thirty-first day after such option begins trading as a Streaming Quote Option, such quotations would be required to be for a size of at least 10 contracts. Thereafter, such non-SQT ROTs would be required to provide such quotations with a size of not less than 10 contracts beginning on the date on which such Streaming Quote Option begins trading on Phlx XL.

The same size requirements set forth for non-SQT ROTs in open outcry (as set forth in the preceding paragraph) would apply to non-SQT ROTs who are required to submit electronic quotations in a Streaming Quote Option for which a non-SQT ROT transacts more than 20% of his/her contract volume in a Streaming Quote Option electronically (*i.e.*, by way of placing limit orders on the limit order book that are executed electronically and allocated automatically in accordance with proposed Phlx Rule 1014(g)(vii)) versus in open outcry during any calendar quarter.

The Exchange proposes to establish additional obligations for non-SQT ROTs trading Streaming Quote Options who do not apply to become SQTs but nonetheless would be required to submit electronic quotations because of the percentage of contracts in Streaming Quote Options they trade electronically. Specifically, if a non-SQT ROT trading a Streaming Quote Option transacts more than 20% of its contract volume electronically in an assigned option that is a Streaming Quote Option during any calendar quarter, such non-SQT ROT would be required to submit continuous two-sided electronic quotations in a designated percentage of series within the Streaming Quote Option (depending on the total Exchange volume traded electronically in such Streaming Quote Option), beginning with the commencement of the following calendar quarter. The following schedule would apply:

[8] For example, if an SQT is assigned in one Streaming Quote Option that includes five series (A, B, C, D, and E), such SQT would be required to quote continuous, two-sided markets in three of those series in order to fulfill the 60% quoting requirement. If such an SQT initially submits quotations in series A, B, and C, and the size associated with the quotation in Series A is exhausted, such SQT would be required either to refresh its quotation in Series A while continuing to submit quotations in Series B and C, or to submit new quotations in any three of the five series, in order to fulfill the 60% quoting requirement.

[9] For example, if a specialist or SQT electronically submits a quotation with a size of 10 contracts, and three of those contracts are executed (leaving a disseminated quotation size of seven contracts), such specialist or SQT would be permitted continue to disseminate that electronic quotation with a size representing the remaining 7 contracts. If, however, such specialist electronically submits a revised quotation, such revised quotation would be required to be for a size of 10 contracts.

[10] *See* Phlx Rule 1080, Commentary .04.

Percent of overall streaming quote option volume transacted on the exchange during the previous quarter that was transacted electronically	Electronic quoting percent (% of series)
50 or Below	20
51–75	40
Above 75	60

For example, if 83% of the total volume on the Exchange in a particular Streaming Quote Option is transacted electronically, non-SQT ROTs in such Streaming Quote Option would be required to maintain continuous quotations in 60% of the series. The Exchange will monitor on a calendar quarter basis the percentage of contracts transacted electronically on the Exchange in each particular Streaming Quote Option for the purpose of adjusting the applicable electronic quoting percentage during the next succeeding calendar quarter.

Proposed Phlx Rule 1014(b)(ii)((C)(1)(d) would clarify that any volume transacted electronically by a non-SQT ROT (*i.e.*, limit orders placed on the limit order book that are executed via Book Match or Book Sweep) would not count towards the ROT's in-person requirement contained in Phlx Rule 1014, Commentary .01.[11]

SQT Participation in Openings

In order to clarify the interaction of SQT quotations with opening orders, the Exchange proposes to adopt Phlx Rule 1017(g), which would provide that, with respect to Streaming Quote Options, SQTs may participate in opening transactions by submitting electronic quotations to interact with opening orders.

Exchange openings and re-openings in options are currently conducted by way of rotation procedures[12] or by way of Series Opening Request Ticket (''SORT'') procedures, as provided in Phlx Rule 1047.[13] Rotation procedures allow a brief period of auction pricing for each option series during which bids and offers and transactions for that option class may normally only occur in that series. Proposed Phlx Rule 1017(g) would clarify that such an auction would include, with respect to Streaming Quote Options, bids and offers submitted electronically by SQTs and/or the specialist.

The opening auction in Streaming Quote Options traded on Phlx XL will continue to be managed by the specialist, principally using the X–Station.[14] Using the X–Station the specialist will be able to see and ascertain the best bid and offer, including limit orders and, with respect to Streaming Quote Options traded on Phlx XL, electronic quotations submitted by SQTs. The specialist will also continue to take into account bids, offers or orders voiced in the trading crowd during the opening auction when determining the opening price.

Proposed Phlx Rule 1017(b)(ii) would provide that, in connection with an opening in a Streaming Quote Option (as defined in Phlx Rule 1080(k)), a bid submitted electronically by the specialist or an SQT in such Streaming Quote Option which is at a higher price than the price at which the option is to be opened and an offer submitted electronically by the specialist or an SQT in such Streaming Quote Option which is at a lower price than the price at which the option is to be opened, are to be executed at the opening price. The purpose of this provision is to ensure that an SQT would receive the best execution at the opening when such SQT's quotation is higher (lower) than the bid (offer).[15]

Assignment in Streaming Quote Options

The Options Allocation, Evaluation and Securities Committee (''OAESC'')[16] would assign SQTs in one or more eligible options in a similar fashion to the current practice of allocation of trading privileges to specialists. Proposed Phlx Rule 507 would set forth the solicitation, application and review process to be followed by the OAESC.

Proposed Phlx Rule 507 would also provide that an application for assignment in Streaming Quote Options would be submitted in writing to the Exchange's designated staff and would be required to include, at a minimum, the name of the SQT applicant and written verification from the Exchange's Membership Services Department that such SQT applicant is qualified as a ROT.

In order to ensure an SQT applicant's technological readiness to submit electronic quotes, proposed Phlx Rule 507(b)(ii) would mandate that no application for assignment in Streaming Quote Options would be approved by the OAESC without written certification signed by an officer (Vice President or above) of the Exchange's Financial Automation Department[17] indicating that the SQT applicant has sufficient technological ability to support his/her continuous quoting requirements as set forth in Phlx Rule 1014(b)(ii), and the SQT applicant has successfully completed, or is scheduled to complete, testing of its quoting system with the Exchange.

In order to clarify that proposed Phlx Rule 507 is not intended to function as a barrier to entry to the Exchange's marketplace while still taking into

[11] Phlx Rule 1014, Commentary .01 provides that, in order for an ROT to receive specialist margin treatment for off-floor orders in any calendar quarter, the ROT must execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person.

[12] A trading rotation is a series of very brief time periods during each of which bids, offers and transactions in only a single, specified option contract can be made. Opening rotations, currently conducted by the specialist assigned in the particular option, are held promptly following the opening of the underlying security on the primary market where it is traded. An underlying security shall be deemed to have opened on the primary market where it is traded if such market has (i) reported a transaction in the underlying security or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening. The Specialist generally first opens the one or more series of options of a given class having the nearest expiration, then proceeds to a series of options having the next most distant expiration, and so forth, until all series have been opened. The Specialist determines which type of option should open first, and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions except in the case of a modified rotation.

Modified rotations include ''reverse'' and ''shotgun'' rotations. A ''reverse rotation'' is an opening rotation where the Specialist first opens the one or more series of options of a given class having the most distant expiration, then proceed to the next nearest expiration, and so forth, ending with the nearest expiration, until all series have been opened. A ''shotgun rotation'' is an opening rotation in which each option series opens in the same manner and sequence as during a regular trading rotation but is permitted to freely trade once all option series with the same expiration month have been opened. *See* Phlx Rule 1047, Commentary .01(a) and (b).

[13] A SORT opening is one where the specialist opens all series in an options class simultaneously after rotating only those series for which a SORT was received. The SORT is a form submitted by a member with interest in a particular series to the specialist, at least five minutes prior to the opening of trading, and signals the specialist to rotate that series. Prior to conducting a SORT procedure, the specialist must announce to the crowd that such a procedure will be utilized, and in which series, if any, a SORT has been received. *See* Phlx Rule 1047, Commentary .01(c).

[14] The X–Station is a component of AUTOM used by the specialist as an on-floor display of the electronic limit order book, and as a tool for, among other things, the manual execution of orders that are due for execution.

[15] The Exchange is not proposing a completely automated opening process at this time.

[16] The Options Allocation, Evaluation and Securities Committee has jurisdiction over the allocation, retention and transfer of the privileges to deal in all options to, by and among members on the options and foreign currency options trading floors. *See* Exchange By-Law Article X, Section 10–7. *See also,* Phlx Rule 500.

[17] The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems, and for monitoring the quality of performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interface with the Exchange's systems.

account the possibility that, initially, quote capacity may become an issue surrounding the number of SQTs who could begin trading as such, the Exchange proposes to add Phlx Rule 507(b)(iii) in order to provide that (i) Phlx Rule 507 places no limit on the number of qualifying ROTs that may become SQTs and (ii) any applicant that is qualified as an ROT in good standing and that satisfies the technological readiness and testing requirements described in sub-paragraph (b)(ii), must be approved as an SQT. However, based on system constraints, capacity restrictions or other factors relevant to the maintenance of a fair and orderly market, the Board may defer, for a period to be determined in the Board's discretion, approval of qualifying applications for SQT status pending any action required to address the issue of concern to the Board. The Board may not defer a determination of the approval of the application of any SQT applicant or place any limitation(s) on access to Phlx XL on any SQT applicant unless the basis for such limitation(s) or deferral have been objectively determined by the Board, subject to Commission approval or effectiveness pursuant to a rule change filing under section 19(b) of the Act. The Committee must provide written notification to any SQT applicant whose application is the subject of such limitation(s) or deferral, describing the objective basis for such limitation(s) or deferral.

The proposed rule also includes a provision that, during the first six months of the deployment of Phlx XL, an SQT applicant member or member organization that has, for at least the immediately preceding twelve months: (i) Been a member of the Exchange and (ii) maintained a continuous presence as an ROT in the trading crowd associated with the Streaming Quote Option(s) that are the subject of the application, must be guaranteed an assignment in the Streaming Quote Option, provided that such member organization has received the written certification concerning technological readiness as set forth in proposed Phlx Rule 507(b)(ii).

Proposed Phlx Rule 507(g) would clarify that an appeal to the Board of Governors from a decision of the Committee may be taken by a member or member organization interested therein by filing with the Secretary of the Exchange written notice of appeal within ten (10) days after the decision has been rendered, in accordance with Exchange By-Law Article XI, Section 11–1.

Trade Allocation in Streaming Quote Options

The proposed rules would codify the trade allocation algorithm that would apply to orders or electronic quotes in Streaming Quote Options that result in automatic executions[18] via the AUTOM System.[19] In the case of trades stemming from orders that are not automatically executed and instead handled manually by the specialist or represented in the trading crowd by a Floor Broker, current Exchange rules concerning allocation of non-automatically executed trades would apply.[20]

The proposed rules would require that automatically executed trades in Streaming Quote Options would be allocated among the specialist and crowd participants with orders or quotations at the Exchange's disseminated price after public customer market and marketable limit orders have been executed. This aspect of the proposed rule change is consistent with current Exchange rules concerning the priority of customer orders.[21]

Quoting alone at the Exchange's best bid/offer. The proposed rules would provide that, if one Phlx XL participant is quoting alone at the disseminated price and its quote is not matched by another Phlx XL participant prior to execution, such Phlx XL participant would be entitled to receive a number of contracts up to the size associated with his/her quote.

Parity. The proposed rules would codify the automatic allocation algorithm that would apply to orders or electronic quotes in Streaming Quote Options that result in automatic executions when two or more Phlx XL participants have quotes or booked limit orders at the Exchange's disseminated price.[22]

Quotations entered electronically by the specialist or an SQT that do not cause an order resting on the limit order book to become due for execution may be matched, or joined, at any time by quotations entered electronically by the specialist and/or other SQTs, and by ROT limit orders placed on the limit order book via electronic interface, and would be deemed to be on parity, subject to the requirement that orders of controlled accounts must yield priority to customer orders as set forth in Phlx Rule 1014(g)(i)(A). This means specifically that if a customer limit order represents all or a portion of the Exchange's disseminated size, such customer limit order would be executed first up to its disseminated size, before the specialist or any SQT, non-SQT ROT, or off-floor broker-dealer would be entitled to receive any contracts.

Quotations entered electronically by the specialist or an SQT that cause the specialist's quote, an SQT's quote, or an order resting on the limit order book to become due for execution would be subject to execution under the proposed

[18] Trades in Streaming Quote Options involving inbound orders and specialist and SQT quotes delivered via AUTOM would be automatically executed by the Book Sweep function (described below); and by the Book Match function (described below). Eligible orders for non-Streaming Quote Options delivered via AUTOM would be automatically executed via AUTO–X, an automatic execution feature of AUTOM (*see* Phlx Rule 1080(c)), or against contra-side orders resting on the limit order book by Book Match under Phlx Rule 1080(g)(ii).

[19] The proposed trade allocation rules would only apply to trades in Streaming Quote Options that are automatically executed via Book Match pursuant to Phlx Rule 1080(g)(ii) and via Book Sweep pursuant to Phlx Rule 1080(c)(ii). Currently, trades that are automatically executed via AUTO–X are allocated among the specialist and ROTs participating on the ''Wheel.'' The ''Wheel'' is a feature of AUTOM that provides an automated mechanism for assigning specialists and ROTs signed on the Wheel for a given listed option, on a rotating basis, as contra-side participants to trades executed via AUTO–X. *See* Phlx Rule 1080(g) and Option Floor Procedure Advice (''OFPA'') F–24. Under the instant proposal, trades in Streaming Quote Options that are automatically executed via Book Match pursuant to the proposed amendments to Phlx Rule 1080(g)(ii) would be allocated automatically according to the algorithm set forth in proposed Phlx Rule 1014(g)(vii) and proposed OFPA B–6, Section F. Trades in non-Streaming Quote Options that are automatically executed via AUTO–X would continue to be allocated on the Wheel or by Book Match.

[20] In April 2003, the Commission approved the Exchange's proposal to adopt Phlx Rule 1014(g)(v) and OFPA B–6 concerning the allocation of non-automatically executed orders in options. *See* Securities Exchange Act Release No. 47739 (April 25, 2003), 68 FR 23354 (May 1, 2003) (SR–Phlx–2001–39). That proposal was filed in response to *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions*, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the ''Order''). While the instant proposal is not filed in direct response to the Order, the Exchange believes that the proposed rules concerning the allocation of trades in Streaming Quote Options are consistent with the requirements of the Order.

[21] Phlx Rule 1014(g)(i)(A) requires that orders of controlled accounts must yield priority to customer orders. A ''controlled account'' includes any account controlled by or under common control with a broker-dealer (such as a specialist or an SQT). Customer accounts are all other accounts.

[22] Phlx Rules 119, 120, and 1014(g) are the general rules concerning establishment of parity and priority in the execution of orders on the options floor. The trade allocation algorithm in proposed Phlx Rule 1014(g)(vii) generally does not contemplate that price-time priority would apply to quotes and orders in Streaming Quote Options. Proposed Phlx Rule 1014(g)(vii)(B)(3) thus would state that, notwithstanding the first sentence of Phlx Rule 1014(g)(i), neither Phlx Rule 119(a)–(d) and (f), nor Phlx Rule 120 (insofar as it incorporates those provisions by reference) would apply to the allocation of automatically executed trades in Streaming Quote Options.

amended rules concerning the Exchange's Book Match or Book Sweep functions, described more fully below.

Specialist on parity. If the specialist is quoting at the Exchange's best bid/offer, after public customer market and marketable limit orders have been executed, the specialist would initially be entitled to receive the entire allocation in orders for five contracts or fewer provided, however, that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five contracts or fewer executed by specialists, and will reduce the size of the orders included in this provision if such percentage is over 25%.

Respecting orders for greater than five contracts, the specialist would be entitled to receive the greater of the proportion of the total disseminated size at the disseminated price represented by the size of the specialist's quote; or:

- 60% of the contracts to be allocated if the specialist is on parity with one SQT or one non-SQT ROT that has placed a limit order on the book at the Exchange's disseminated price;
- 40% of the contracts to be allocated if the specialist is on parity with two SQTs or non-SQT ROTs that have placed a limit order on the book at the Exchange's disseminated price; and
- 30% of the contracts to be allocated if the specialist is on parity with three or more SQTs or non-SQT ROTs that have placed a limit order on the book at the Exchange's disseminated price.

In order to be entitled to receive the specified percentages, and the five contract or fewer order preference, the specialist must be quoting at the Exchange's disseminated price. The specialist would not be entitled to receive a number of contracts that is greater than the size associated with the specialist's quote.

The Exchange believes that the specialist's entitlement under this algorithm should enable the Exchange to attract and retain highly capitalized specialist units who can capture order flow for the Exchange. According to the Exchange, because the specialist unit is currently a key Exchange member organization engaged in aggressive and often expensive marketing efforts to attract order flow in particular options, the Exchange seeks to provide the appropriate encouragement to specialists to plan, invest in, and effect marketing strategies. Therefore, the Exchange believes that these programs provide specialists with the appropriate incentive to create more depth and liquidity. Moreover, the Exchange believes that the specialist's entitlement in the proposed algorithm reasonably rewards specialists for their additional obligations, such as the proposed requirement to quote 100% of the series in all Streaming Quote Options in which they are assigned (whereas SQTs would be required by proposed Phlx Rule 1014(b)(ii) to quote in 60% of the series in Streaming Quote Options in which they are assigned); the obligation to handle limit orders on the book; the obligation under the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Linkage Plan'')[23] to handle all inbound Linkage Orders and to send Satisfaction Orders on behalf of customer limit orders on the specialist's book; and the obligation, under certain circumstances, to allocate manually executed trades.[24]

After public customer limit orders have been executed and the specialist has received its entitlement, SQTs quoting at the disseminated price and non-SQT ROTs that have placed limit orders on the limit order book which represent the Exchange's disseminated price would be entitled to receive a number of contracts that is the proportion of the aggregate size associated with SQT quotes and non-SQT ROT limit orders on the book at the disseminated price represented by the size of the SQT's quote or, in the case of a non-SQT ROT, by the size of the limit order they have placed on the limit order book. Such SQT(s) and non-SQT ROTs would not be entitled to receive a number of contracts that is greater than the size associated with their quotation or limit order.

With respect to contracts relating to off-floor broker-dealer limit orders resting on the limit order book that are executed and allocated automatically, if any contracts remain to be allocated after the specialist, SQTs and non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers that have placed limit orders on the limit order book which represent the Exchange's disseminated price would be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book. Such off-floor broker-dealers would not be entitled to receive a number of contracts that is greater than the size that is associated with its quote.

However, when an off-floor broker-dealer order is resting on the limit order book at the Exchange's disseminated bid or offer, an order executed manually by the specialist would be required to be allocated first to customer orders, and next to off-floor broker-dealer limit orders, before the specialist and SQTs with quotations at the same price and non-SQT ROTs that have placed limit orders via electronic interface at the same price would be entitled to receive their respective allocations under proposed Phlx Rule 1014(g)(vii).

Currently, Phlx Rule 1014(g)(i)(A) provides that orders of controlled accounts[25] must yield priority to customer orders, but that orders of controlled accounts are not required to yield priority to other controlled account orders. The Exchange proposes to amend Phlx Rule 1014(g)(i)(A) to require the specialist, SQTs and non-SQT ROTs to yield priority to off-floor broker-dealer limit orders in Streaming Quote Options resting on the limit order book solely in the limited circumstance where the specialist executes such an order manually, and not in the circumstance where such an order is executed and allocated automatically under Phlx XL. The purpose of this provision is to ensure that the specialist complies with the fiduciary obligation that devolves upon the specialist when acting as agent for such a limit order.

In the situation where the off-floor broker-dealer limit order resting on the limit order book is executed and allocated automatically, the Exchange believes that the operation of the proposed automatic trade allocation algorithm contained in proposed Phlx Rule 1014(g)(vii), which would allocate contracts to off-floor broker-dealer limit orders resting on the limit order book after customers, the specialist, SQTs and non-SQT ROTs have received their respective allocations is appropriate since the specialist is not acting as ''agent'' for such an order in such a circumstance.

Off-Floor Broker-Dealer Orders and section 11(a) of the Act

Exchange rules do not currently distinguish between members or non-members respecting ''off-floor broker-dealer'' orders. The Exchange believes that its definition of ''off-floor broker-dealer,''[26] which does not make this

[23] *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of Phlx Joining the Plan) and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

[24] *See* Phlx Rule 1014(g)(vi) and OFPA F–2.

[25] Phlx Rule 1014(g)(i)(A) defines a controlled account as any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

[26] The term ''off-floor broker-dealer'' means a broker-dealer that delivers orders from off the floor

distinction, is consistent with section 11(a) of the Act[27] and the rules thereunder.

Section 11(a) prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion, unless certain exceptions apply. One such exception is Rule 11a2–2(T) under the Act,[28] known as the ''Effect Versus Execute Rule,'' permits an exchange member, subject to certain conditions, to effect a transaction for such accounts, utilizing an unaffiliated member to execute transactions on an exchange floor. The Rule requires that: (i) The order must be transmitted from off the exchange floor; (ii) once the order has been transmitted, the exchange member that transmitted the order may not participate in the execution; (iii) the transmitting member may not be affiliated with the executing member; and (iv) neither nor the member nor the associated person may retain any compensation in connection with effecting such a transaction respecting accounts over which either has investment discretion without the express written consent of the person authorized to transact business in the account. When the Exchange received Commission approval to allow off-floor broker dealers to deliver proprietary orders to the limit order book over AUTOM,[29] the Commission provided the Exchange with interpretive guidance based on the Exchange's representations that the Effect vs. Execute Rule was applicable to off-floor broker-dealer orders that are delivered via AUTOM.[30]

The instant proposal, which includes proposed rules relating to the priority and trade allocation of off-floor broker-dealer limit orders handled manually, may affect the yielding of priority by member and non-member off-floor broker-dealer limit orders in certain instances. Specifically, Section 11(a)(1)(G) of the Act[31] provides an exemption from the prohibition against a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion for any transaction for a member's own account for a member who engages in a specific securities business, but requires such member to yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.[32]

As stated above, proposed Phlx Rule 1014(g)(i)(A) currently provides that orders of controlled accounts must yield priority to customer orders, and that orders of controlled accounts are not required to yield priority to other controlled account orders, except when the specialist manually executes an off-floor broker-dealer limit order on the limit order book as provided in proposed Phlx Rule 1014(g)(i)(A). The Exchange believes that the only potential issue raised by including both member and non-member off-floor broker-dealers is the issue of manual allocation of contracts by specialists among such member and non-member off-floor broker-dealers, and the requirement that member broker-dealers who satisfy a ''business mix test,'' [33] and who therefore rely on the section 11(a)(1)(G) exemption, yield priority to non-member broker-dealers.

The Exchange believes that its proposal to include member and non-member off-floor broker-dealers together in proposed Phlx Rule 1014(g)(i)(A) relating to the manual trade allocation rules is consistent with Section 11(a) of the Act and Rule 11a1–1(T) thereunder because Exchange rules require any order to which the yielding requirement of Section 11(a)(1)(G)(i) applies is required to be marked with the requirement to yield priority, including such orders placed on the limit order book by Floor Brokers.[34] Thus, specialists manually allocating such orders to off-floor broker-dealers would know from the notation on the order which member off-floor broker-dealer limit orders must yield to non-member off-floor broker-dealer orders.

Specialist not on parity. If the specialist is not quoting at the

of the Exchange for the proprietary account(s) of such broker-dealer, including a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker. *See* Phlx Rule 1080(b)(i)(C).

[27] 15 U.S.C. 78k(a).

[28] 17 CFR 240.11a2–2T.

[29] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40) (Order approving the establishment of a six-month pilot program relating to broker-dealer access to AUTOM); *see also* Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR–Phlx–2002–50) (Order granting permanent approval of the pilot program providing broker-dealer access to AUTOM).

[30] *See* letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Richard S. Rudolph, Counsel, Phlx, dated April 15, 2002.

[31] 15 U.S.C 78k(a)(1)(G).

[32] Section 11(a)(1)(G) of the Act provides that it shall not make unlawful any other transaction for a member's own account, provided that (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and (ii) such transaction is effected in compliance with rules of the Commission which, at a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.

[33] Rule 11a1–1T under the Act provides that a transaction effected on a national securities exchange for the account of a member which meets the requirements of Section 11(a)(1)(G)(i) of the Act shall be deemed, in accordance with the requirements of Section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange if such transaction is effected in compliance with each of the following requirements:

A member shall disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any member through whom that bid or offer is communicated shall disclose to others participating in effecting the order that it is for the account of a member.

Immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange shall clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member.

Notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member shall grant priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member, irrespective of the size of any such bid or offer or the time when entered.

A member shall be deemed to meet the requirements of Section 11(a)(1)(G)(i) of the Act if during its preceding fiscal year more than 50 percent of its gross revenues was derived from one or more of the sources specified in that section. In addition to any revenue which independently meets the requirements of Section 11(a)(1)(G)(i), revenue derived from any transaction specified in paragraph (A), (B), or (D) of Section 11(a)(1) of the Act or specified in Rule 11a1–4(T) shall be deemed to be revenue derived from one or more of the sources specified in Section 11(a)(1)(G)(i). A member may rely on a list of members which are stated to meet the requirements of Section 11(a)(1)(G)(i) if such list is prepared, and updated at least annually, by the exchange. In preparing any such list, an exchange may rely on a report which sets forth a statement of gross revenues of a member if covered by a report of independent accountants for such member to the effect that such report has been prepared in accordance with generally accepted accounting principles.

17 CFR 240.11a1–1T.

[34] Phlx Rule 1014(g)(i)(A) and OFPA B–6 require that orders of controlled accounts, other than ROTs and Specialists market making in-person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order (except market maker tickets) or, in the case of trades involving a Floor Broker, by making the appropriate notation the Options Floor Broker Management System.

Exchange's disseminated price, SQTs quoting at the disseminated price and non-SQT ROTs that have placed limit orders on the limit order book which represent the Exchange's disseminated price would be entitled to receive a number of contracts that is the proportion of the total remaining disseminated size at the disseminated price represented by the size of the SQT's quote or, in the case of a non-SQT ROT, by the size of the limit order they have placed on the limit order book. Thereafter, off-floor broker-dealers that have placed limit orders on the limit order book which represent the Exchange's disseminated price would be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book, not to exceed the size of their limit orders.

Split price executions. Proposed Phlx Rule 1014(g)(vii)(B)(3) would provide that there would be no automatic split-price executions in Streaming Quote Options. Therefore, if a market order or an electronic quotation to be executed in a Streaming Quote Option is received for a greater number of contracts than the Exchange's disseminated size, the portion of such an order or quotation executed via Book Match at the Exchange's disseminated size would be allocated in accordance with proposed Phlx Rule 1014(g)(vii). Contracts remaining in such an order would be represented by the specialist and handled in accordance with Exchange rules.

The Exchange believes that, respecting Streaming Quote Options in which specialists and SQTs submit independent electronic quotations, it is inappropriate for the Exchange to establish the next price at which the remaining contracts in a market order should be executed after the Exchange's disseminated size is exhausted. To ensure that the remaining contracts in such an order are executed at the best price available from Exchange specialists and SQTs, the Exchange would not automatically execute the remaining portion of such an order. Instead, the Exchange believes that the specialist, SQTs and ROTs should re-establish their bids and offers upon exhaustion of the Exchange's disseminated size and execute the remaining contracts manually.

Participation in non-electronic orders. An SQT participating in a crowd (together with the specialist and non-SQT ROTs in the crowd) would be permitted to participate in manual trades initiated by Floor Brokers or the specialist in such a crowd.

Accordingly, an SQT generally must be present in the trading crowd to participate in non-electronic trades, with one exception. While the proposed rules generally require in-crowd presence to participate in non-electronic trades, proposed Phlx Rule 1014, Commentary .05(c) would provide that, where a non-electronic trade is initiated by a Floor Broker or specialist, an SQT assigned in a Streaming Quote Option who is located in the SQT Zone (as described below) for the Streaming Quote Option, but who is not participating in the crowd trading the Streaming Quote Option, would be able to participate in such a manual trade only if the non-electronic order is executed at the price quoted by the non-crowd participant SQT at the time of execution. For purposes of trade allocation, such an SQT would be entitled to receive contracts under existing Phlx Rule 1014(g)(v), which applies to the allocation of contracts for orders handled manually by the specialist or represented in the crowd by a floor broker.

The proposed rule would permit the specialist and/or SQTs participating in a crowd, in response to a verbal request for a market by a floor broker, to state a bid or offer that is different than their electronically submitted bid or offer, provided that such stated bid or offer is not inferior to such electronically submitted bid or offer, with one exception.

Specifically, Commentary .05(c) would provide that the requirement that a specialist or SQT state a bid or offer that is not inferior to their electronically submitted quotation would not apply if such response is to a floor broker's solicitation of a single bid or offer as set forth in Phlx Rule 1033(a)(ii). In such a situation, Phlx Rule 1033(a)(ii) permits the members of a trading crowd to discuss, negotiate and agree upon the price or prices at which an order of a size greater than the Exchange's disseminated size can be executed at that time, or the number of contracts that could be executed at a given price or prices.[35] This is especially true of extremely large sized orders where the trading crowd may determine by agreement to quote a single price that could be inferior to an electronic quotation submitted by a specialist or an SQT.[36]

In order to remain consistent with the Linkage Plan, the Exchange proposes to amend Phlx Rule 1033(a)(ii) and Advice F–32 to provide that orders executed under the Rule and Advice are subject to the provisions of the Linkage Plan and Phlx Rules 1083—1087 respecting Trade-Throughs.[37]

[35] Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice (''Advice'') F–32, Solicitation of Quotations, provide that, in response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO-X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs). *See* Securities Exchange Act Release No. 45573 (March 15, 2002), 67 FR 13674 (March 25, 2003) (SR–Phlx–2001–33) (filed in response to Section IV.B.j. of the Order, which requires the Exchange (as well as the other respondent options exchanges) to implement certain undertakings. One such undertaking to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class).

[36] As stated in the Exchange's proposal to adopt Phlx Rule 1033(a)(ii),

''Ordinarily, in meeting their obligation to make fair and orderly markets, Phlx specialists and ROTs would be expected to make independent business decisions concerning what market to quote at a particular point in time, in lieu of discussing or agreeing with other members of the trading crowd on what should be the market for a particular option. In order to make fair and orderly markets and to respond efficiently to the needs of investors, however, the Phlx believes that there are circumstances where some coordination among ROTs and specialists is both necessary and beneficial.

For example, when a request for a market to buy or sell a large number of options contracts is presented by the floor broker to the trading crowd, the customer on whose behalf the request is made typically wants to know promptly at what single price all of the options represented by the request may be bought or sold. However, such large trades typically require more liquidity than any single ROT or the specialist is able to provide. Coordinated efforts of the trading crowd are, thus, necessary to respond to such a request and to fill any resulting order to buy or sell the option at a single price. In this regard, borrowing a phrase from corporate principles, the Phlx believes that the trading crowd is properly viewed as a ''joint venture,'' in which the resources of the individual crowd members are combined to produce the necessary liquidity to respond to the needs of investors and to compete effectively with other options exchanges.

When an options order exceeds the size that individual trading crowd members can execute, the Phlx believes that the trading crowd must act as a joint venture or single economic unit. In this situation, the trading crowd must reach agreement on the price they will offer because the customer desires a single price. Significantly, in the Exchange's view, the antitrust laws permit competitors to collaborate to produce and sell a product that they could not otherwise offer individually. In fact, such activity is pro-competitive because it increases output and increases the number of competitors.''

See Securities Exchange Act Release No. 45391 (February 4, 2002), 67 FR 6570 (February 12, 2002) (SR–Phlx–2001–33).

[37] Under the Linkage Plan and Exchange Rules, a ''Trade-Through'' means a transaction in an options

Crowd Area

For purposes of Phlx Rule 1014, Commentary .03, an SQT or non-SQT ROT would be deemed to be participating in a crowd if such SQT or non-SQT ROT is, at the time an order is represented in the crowd, physically located in a specific ''Crowd Area.'' A Crowd Area would consist of a physical location marked with specific, visible physical boundaries on the options floor, as determined by the Options Committee.[38] An SQT or non-SQT ROT who is physically present in such Crowd Area may engage in options transactions in assigned issues as a crowd participant in such a Crowd Area, provided that such SQT or non-SQT ROT fulfills the requirements set forth in Phlx Rule 1014. An SQT or non-SQT ROT would be deemed to be participating in a single Crowd Area, and thus would not be permitted to be a crowd participant in more than one particular Crowd Area at any specific time.

SQT Zones

Proposed Phlx Rule 1014, Commentary .05(b) would provide that an SQT may be assigned to (and thus submit quotes electronically in) up to all of the options located within a specified physical zone on the Exchange Floor (an ''SQT Zone'') provided that such SQT is physically present in such SQT Zone. Thus, each member organization must have at least one SQT physically present in each SQT Zone in which such member organization submits electronic quotations. An SQT Zone could consist of multiple Crowd Areas. Each SQT Zone would be identified as including specific Crowd Areas (for example, ''SQT Zone 1'' might be identified as encompassing Crowd Areas A–D, ''SQT Zone 2'' might be identified as encompassing Crowd Areas E–H, etc.).

Initially, there would be one SQT Zone representing the entire options trading floor. This means that an SQT could submit electronic quotations in any Streaming Quote Option while such SQT is physically on the Exchange floor.

The number and location of any additional SQT Zones would be determined by the Options Committee based on its review of quote and trade data during the first six months of the deployment of Phlx XL. Proposed Phlx Rule 1014, Commentary .05(c) would require the Exchange to file for, and receive, Commission approval in the event the Options Committee determines to change the number and/or location of SQT Zones.

ROT Limit Orders

The proposed rule change would amend the Exchange's rules regarding ROT electronic access to the limit order book.[39] Currently, ROTs are permitted by rule to enter electronic price improving limit orders (and orders matching such orders entered by the specialist or other ROTs in the trading crowd) onto the limit order book via electronic interface with AUTOM, and are entitled to receive a special allocation in trades stemming from such price improving limit orders.[40] Under the instant proposal, ROTs would be permitted under Phlx Rule 1080(b)(i)(B) and Commentary .04 to place certain limit orders on the limit order book electronically. The requirement that such limit orders be price-improving orders, however, would be deleted. ROTs would be permitted to place limit orders, including Good Till Cancelled (''GTC'') orders, on the limit order book whether such an order improves the then-prevailing Exchange market or not. ROTs entering limit orders on the book would be required to submit such orders with a size of at least ten contracts in both Streaming Quote Options and non-Streaming Quote Options. ''Price-Improving ROTs'' that place price-improving limit orders would continue to be entitled to receive contracts under the aforementioned special allocation.

The proposed rule would provide that, respecting Streaming Quote Options, inbound AUTOM orders or electronic quotations eligible for execution against non-SQT ROT orders entered into AUTOM via electronic interface would be automatically executed and would be allocated automatically pursuant to Exchange rules.[41]

The Exchange believes that the instant proposal, which would enable SQTs to stream electronic quotes, combined with the size *pro rata* allocation algorithm applicable to automatically executed trades resulting from such quotes, rewards market participants for quoting and providing liquidity at the best price. The Exchange believes that the result would thus be substantially enhanced incentives for market participants to quote competitively and substantially reduced disincentives to quote competitively. In Streaming Quote Options, non-SQT ROTs with limit orders on the book at the Exchange's disseminated price that are automatically executed would be allocated contracts according to proposed new Phlx Rule 1014(g)(vii), which, as stated above, would reward non-SQT ROTs who provide liquidity at the best price.

Book Match

Book Match is a feature of AUTOM that currently provides automatic executions for inbound AUTOM-delivered customer and off-floor broker-dealer[42] *orders* against customer limit orders on the book. The proposed rules would enhance Book

series at a price that is inferior to the NBBO. The Linkage Plan and Exchange Rules provide that, absent reasonable justification and during normal market conditions, members should not effect Trade-Throughs. See Phlx Rule 1085(a)(1). If a Trade-Through occurs, the Linkage Plan and Exchange Rules provide certain rights and remedies for aggrieved parties whose markets are traded through. A Block Trade (defined in the Linkage Plan and Exchange Rules as a trade that involves 500 or more contracts and has a premium value of at least $150,000) effected at a price outside the NBBO is not deemed to be a Trade-Through for purposes of surveillance and enforcement, provided that the member(s) that execute such a Block Trade have satisfied all aggrieved parties in accordance with the Linkage Plan and Exchange Rules. *See* Phlx Rule 1085(d)(2).

[38] While the proposed rules would grant authority to assign trading privileges in Streaming Quote Options to the OAESC (which includes three off-floor persons, one public Governor, and one non-industry governor pursuant to Phlx Rule 500), the proposed rules would grant authority to determine the physical location of Crowd Areas and SQT Zones to the Options Committee, which is composed of specialists, ROTs and Floor Brokers who conduct business on the Exchange's Options Floor. The purpose of this provision is to ensure that Exchange members who are most familiar with the physical configuration and layout of the Exchange's Options Floor (*i.e.*, the members of the Options Committee) determine such physical location.

[39] In November, 2002, the Commission approved the Exchange's proposal to allow on-floor, in-crowd ROTs to place electronic price-improving limit orders on the limit order book via electronic interface with AUTOM, and to provide a special trade allocation algorithm applicable to trades involving such limit orders. *See* Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2003) (SR–Phlx–2002–04). That proposal was filed in response to the Order (*see supra* note 20) which required, among other things, that the respondent exchanges adopt new, or amend existing, rules concerning its automated quotation systems which substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively. The Commission recently approved Phlx's proposal to modify the timetable for the automatic execution of such limit orders as such automaton relates to both Streaming Quote Options and non-Streaming Quote Options. *See* Securities Exchange Act Release No. 49151 (January 29, 2004), 69 FR 6010 (February 9, 2004) (SR–Phlx–2004–01).

[40] *Id.*

[41] Respecting Streaming Quote Options, non-SQT ROT limit orders on the book, entered electronically or manually by the specialist that are automatically executed would be allocated pursuant to proposed Phlx Rule 1014(g)(vii).

[42] Phlx Rule 1080(b)(i)(C) defines an ''off-floor broker-dealer'' as a broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer, including a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker.

Match to provide that the contra-side to automatically executed inbound eligible orders would be a limit order on the book or specialist and/or SQT electronic quotes (''electronic quotes'') at the disseminated price where the Exchange's disseminated size includes a limit order on the book and/or electronic quotes at the disseminated price. The enhancements would involve the automatic execution of inbound market and marketable limit orders against contra-side booked limit orders and/or quotes that are included in the Exchange's disseminated quotation.

Book Match would not be engaged: (i) When the Exchange's disseminated price represented by a limit order on the book is not the National Best Bid or Offer (''NBBO''); (ii) for pre-opening orders; and (iii) during trading rotations. In these situations, incoming orders would be subject to manual handling by the specialist.

The Exchange believes that the proposed enhancements to Book Match should provide for a greater number of automatic executions involving matching inbound orders against booked limit orders and SQT and specialist quotations that are included in the Exchange's disseminated quotation, thus providing customers with quicker, more efficient executions for a larger number of trades.

Book Sweep

Similar to Book Match, the Book Sweep function currently matches specialist *quotations* generated by Auto-Quote (or by a proprietary quoting system called ''Specialized Quote Feed'' or ''SQF'') against booked limit orders representing the Exchange's disseminated bid or offer when such quotations lock or cross the booked limit order (provided that the disseminated bid or offer is at the NBBO). Currently, Phlx Rule 1080(c)(iii) provides that, when the bid or offer generated by the Exchange's Auto-Quote system or SQF matches (locks) or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book, orders on the limit order book in that series will be automatically executed up to the size associated with the quote that locks or crosses the order on the limit order book and allocated among crowd participants signed onto the Wheel.

Book Sweep would be enhanced in Phlx XL for Streaming Quote Options under the instant proposed rule change to allow SQT quotations, in addition to specialist quotations, to initiate the Book Sweep function. The SQT Book Sweep feature would function in essentially the same manner as the current Auto-Quote or SQF Book Sweep feature, *i.e.*, when an SQT submits a quotation that locks or crosses a limit order on the book that represents the Exchange's best bid or offer, such limit order would be executed automatically up to the size associated with the SQT's quotation, and would be automatically allocated in accordance with Exchange rules. The specialist or SQT may manually initiate the Book Sweep feature by sending a manual quote in situations where the specialist or SQT's automatic generation of electronic quotations is suspended due to, for example, a system malfunction. Eligible orders on the limit order book would be automatically executed up to the size associated with the quote that matches or crosses such limit orders. Orders on the limit order book would not be eligible for Book Sweep when the NBBO is crossed (*i.e.*, 2.10 bid, 2 offer).

The current functionality of Book Sweep would remain effective for non-Streaming Quote Options. The above-described enhancements would apply to Streaming Quote Options, and the Exchange proposes to amend Phlx Rule 1080(c)(iii) to reflect the Book Sweep functionality for both Streaming Quote and non-Streaming Quote Options.

NBBO Step-Up

The Exchange's current rules relating to the ''NBBO Step-Up'' AUTO–X function would be deleted for all options, including both Streaming Quote Options and non-Streaming Quote Options. The purpose of this proposal is to enhance incentives for specialists and SQTs to quote competitively at the NBBO, rather than relying on the representation that the Exchange would ''step up'' and automatically execute at the NBBO as disseminated by another exchange if such other exchange's disseminated market falls within a specified ''step-up parameter'' of the Exchange's disseminated quote.

Firm Quotations

The introduction of independent streaming options quotations in Phlx XL necessitates various changes to the Exchange's ''Firm Quote'' requirements.

Definition of disseminated size. The Exchange proposes to amend Phlx Rule 1082, Firm Quotations, by establishing by rule the Exchange's firm quotation size with respect to non-Streaming Quote Options and with respect to Streaming Quote Options.[43]

Respecting non-Streaming Quote Options, the Exchange's ''disseminated size'' would be defined as, with respect to the disseminated price, at least the sum of the size associated with: (1) Limit orders; and (2) specialists' quotations generated by Auto-Quote or Specialized Quote Feed (''SQF'') as described in Phlx Rule 1080, Commentary .01 (which represents the collective quotation size of the specialist and any ROTs bidding or offering at the disseminated price unless an ROT has expressly indicated otherwise in a clear and audible manner). The proposed definition of ''disseminated size'' respecting non-Streaming Quote Options would provide more specificity to the current definition, which includes at least the sum of limit orders and allows, but does not require, the specialist and/or crowd to add additional size to the Exchange's disseminated size. The Exchange believes that the requirement that specialists' quotations generated by Auto-Quote or SQF be included in the disseminated size provides a more accurate and transparent reflection of the size for which the Exchange is firm in quotations for non-Streaming Quote Options.

The Exchange is proposing to adopt new Phlx Rule 1082(a)(ii)(B) to establish by rule the definition of ''disseminated size'' that would apply to Streaming Quote Options. Specifically, for Streaming Quote Options, ''disseminated size'' would mean, with respect to the Exchange's disseminated price, at least the sum of the size associated with limit orders, specialists' quotations,[44] and SQTs' quotations. The Exchange would disseminate the aggregate size of these three components.

Proposed Phlx Rule 1082(a)(ii)(C)(1) would provide that, if an SQT's quotation size in a Streaming Quote Option is exhausted, such SQT's quotation would be deleted from the Exchange's disseminated quotation until the time the SQT revises his/her quotation. Although such SQT's quotation size in a given series may be exhausted and thus removed from the Exchange's disseminated quotation in that series, such an SQT would nonetheless continue to be required to submit continuous two-sided quotations in not less than 60% of the series in each Streaming Quote Option in which

[43] Rule 11Ac1–1(d)(1)(i) under the Act permits an exchange to establish by rule, and periodically publish, the quotation size for listed options, for which responsible brokers or dealers are obligated to execute an order. 17 CFR 240.11Ac1–1(d)(1)(i).

[44] Because the specialist and SQTs in Streaming Quote Options would be quoting independently, the term ''specialist's quotations'' with respect to Streaming Quote Options would mean the individual specialist's quotation, including, for purposes of the definition of ''disseminated size,'' the size associated with such a quotation.

such SQT is assigned, in accordance with proposed Phlx Rule 1014(b)(ii)(B).

Proposed Phlx Rule 1082(a)(ii)(C)(2) would provide that, if the Exchange's disseminated size in a particular series in a Streaming Quote Option is exhausted, the Exchange would disseminate the next best available quotation.[45] If no specialist or SQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size, the Exchange would automatically disseminate the specialist's most recent disseminated price prior to the time of such exhaustion with a size of one contract.

This provision is intended to address the situation in which the size associated with all SQT quotations in a given series, together with the specialist's quotation in such series, are exhausted.[46] The purpose of this proposal is to ensure that the specialist is fulfilling the continuous quoting requirement set forth in proposed Phlx Rule 1014(b)(ii)(B) by disseminating continuous two-sided markets in Streaming Quote options in which such specialist is assigned, while permitting the specialist to revise its quote. If SQTs continue to submit quotations at the disseminated price, inbound AUTOM orders or quotes would be eligible for automatic execution against such SQT quotations.

Responsible broker or dealer. Currently, the Exchange's disseminated market (whether by Auto-Quote or specialized quote feed) is deemed to represent the quotations of all ROTs in that option unless an ROT has expressly indicated otherwise.[47] All ROTs in such an option who have not expressly indicated that the disseminated market does not represent their quote would collectively be bidding or offering at the disseminated price, and thus are the collective ''responsible brokers or dealers'' for purposes of the Exchange's ''Firm Quote'' requirement. Phlx Rule 1082(b) currently provides that responsible brokers or dealers bidding (or offering) at the disseminated price are collectively required to execute orders presented to them at such price up to the disseminated size. This would remain in effect for non-Streaming Quote Options.

Because, however, SQTs and specialists would be quoting independently in Streaming Quote Options, each individual SQT and specialist would be deemed to be the ''responsible broker or dealer'' in Streaming Quote Options. To address this change, proposed new Phlx Rule 1082(b)(ii) would provide that, with respect to Streaming Quote Options, in the event an SQT or specialist in a Streaming Quote Option has electronically communicated on the Exchange bids or offers for a Streaming Quote Option, each such SQT or specialist would be considered a ''responsible broker or dealer'' for that bid or offer, up to the size associated with such responsible broker or dealer's bid or offer. There thus would be individual ''responsible brokers or dealers,'' and no ''collective'' firm quotation requirement, in Streaming Quote Options.[48]

Locked and crossed markets. Two new Commentaries to Phlx Rule 1082 are proposed, relating to the situation in which a specialist or SQT's quotation locks (*i.e.*, 1.00 bid, 1.00 offer) or crosses (*i.e.*, 1.10 bid, 1.00 offer) another quotation.

Because the specialist and multiple SQTs would be quoting simultaneously, there may be instances where quotes may become locked. Under the proposal, the Exchange would disseminate the locked market and both quotations (bid and offer) would be deemed ''firm'' disseminated market quotations. Once SQT and/or specialists' quotations become locked, a one-second ''counting period'' will begin during which SQTs and/or specialists whose quotations are locked may eliminate the locked market. However, such SQT and/or specialist would be obligated to execute orders at their disseminated quotation. During the ''counting period'' SQTs and specialists located in the Crowd Area in which the option that is the subject of the locked market is traded will continue to be obligated to respond to floor brokers as set forth in Phlx Rule 1014, Commentary .05(c), and would continue to be obligated for one contract in open outcry to other SQTs, non-SQT ROTs, and specialists.

If at the end of the counting period the quotations remain locked, the locked quotations will automatically execute against each other in accordance with the allocation algorithm set forth in Phlx Rule 1014(g)(vii).

The Options Committee may shorten the duration of the one-second ''counting period.'' The quotation that is locked may be executed by another order during the one-second ''counting period.''

Crossed Markets. The Exchange will not disseminate an internally crossed market (*e.g.*, $1.10 bid, 1.00 offer). If an SQT or specialist submits a quotation in a Streaming Quote Option (''incoming quotation'') that would cross an existing quotation (''existing quotation''), the Exchange will: (i) Change the incoming quotation such that it locks the existing quotation; (ii) send a notice to the SQT or specialist that submitted the existing quotation indicating that its quotation was crossed; and (iii) send a notice to the specialist or SQT that submitted the incoming quotation, indicating that its quotation crossed the existing quotation and was changed. Such a locked market would be handled in accordance with proposed Commentary .01 concerning locked markets. During the one-second counting period, if the existing quotation is cancelled subsequent to the time the incoming quotation is changed, the incoming quotation will automatically be restored to its original terms.

Other Rules and OFPAs

The Wheel. The Exchange is proposing to amend its OFPA F–24 to reflect that the Wheel will apply only to non-Streaming Quote Options. Because a new trade allocation algorithm would become effective with respect to Streaming Quote Options, taking into account the entitlements of the specialist, SQTs, ROTs and off-floor broker-dealers based on the size associated with their quotes and/or limit

[45] The Exchange would have available the quotations submitted by the specialist and SQTs in a particular series, and would disseminate only the aggregate size of SQT and specialist quotations at the best bid and offer on the Exchange. If the best bid or offer is exhausted and not refreshed, the Exchange would disseminate the next best bid or offer submitted by the specialist and/or SQTs quoting in the series.

[46] Rule 11Ac1–1(d)(3) under the Act provides that no responsible broker or dealer shall be obligated to execute a transaction for any listed option if, prior to the presentation of an order, the responsible broker or dealer has communicated to its exchange, a revised quotation size or a revised bid or offer. 17 CFR 240.11Ac1–1(d)(3). *See also* 17 CFR 240.11Ac1–1(c)(3)(i)(A) and (c)(3)(ii)(A).

[47] *See* Phlx Rule 1080, Commentary .01(c).

[48] This is consistent with Rule 11Ac1–1(a)(21)(i) under the Act, which provides:

''The term responsible broker or dealer shall mean:

(i) When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent; provided, however, That, in the event two or more members of an exchange have communicated on such exchange bids or offers for a covered security at the same price, each such member shall be considered a 'responsible broker or dealer' for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and further provided, That for a bid or offer which is transmitted from one member of an exchange to another member who undertakes to represent such bid or offer on such exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the 'responsible broker or dealer' for that bid or offer.'' 17 CFR 240.11Ac1–1(a)(21)(i).

orders, the trade allocation algorithm applicable to non-Streaming Quote Options would not apply in Streaming Quote Options.[49]

Auto-X Disengagement. The provisions relating to orders otherwise eligible for automatic execution via AUTO–X currently included in Phlx Rule 1080(c)(iv) would continue to apply to non-Streaming Quote Options; such provisions would not apply to Streaming Quote Options because the automatic execution function for Streaming Quote Options is Book Match or Book Sweep, not AUTO–X.

Currently, Phlx Rule 1080(c)(iv)(I) provides that, when the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until November 30, 2004) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually by the specialist. The proposed rule change would amend the rule to provide that this provision would continue to apply only to non-Streaming Quote Options.

Automatic executions in Streaming Quote Options would be initiated under the Book Match or Book Sweep function and allocated automatically in accordance with proposed Phlx Rule 1014(g)(vii), whereas automatic executions in non-Streaming Quote Options would be executed via AUTO–X and allocated on the Wheel.

Proposed Phlx Rule 1080(c)(iii) would provide that Book Sweep would be engaged when AUTO–X is engaged, and would be disengaged when AUTO–X is disengaged. In order to disengage AUTO–X, a specialist is required to obtain the approval of two Floor Officials pursuant to OFPA A–13, and under extraordinary circumstances, pursuant to Phlx Rule 1080(e). Moreover, the specialist would not be able to disengage AUTO–X (and thus the Book Sweep function) such that an SQT could not initiate Book Sweep manually; an SQT would have the ability to initiate the Book Sweep function regardless of whether the specialist has obtained the necessary Floor Official approval and disengaged the AUTO–X feature. The ''disengagement'' provision is not proposed for Streaming Quote Options because when the size associated with an individual specialist or SQT's quotation is exhausted, there is no ''disengagement'' of a system; such a quotation would be handled in accordance with proposed Phlx Rules 1082(a)(ii)(C)(1) and (2), as stated above.

Removal of Unreliable Quotes. While the Exchange is proposing to delete the provisions in Phlx Rule 1080(c)(i) relating to the NBBO Feature, certain language contained in that rule describing the conditions and procedures under which the Exchange can exclude another market's quotes from its calculation of the NBBO would be retained. The provisions relating to the removal of unreliable quotes from another exchange from the Exchange's calculation of NBBO are intended to apply to both Streaming Quote Options and non-Streaming Quote Options.

Eligible AUTOM order types. Currently, the specialist, when alerted by AUTOM, handles the conversion of contingency orders on the limit order book into market or marketable limit orders when the respective condition applicable to such orders is manifested. The Exchange's systems do not currently perform this task electronically. The Exchange therefore proposes to amend Phlx Rule 1080(b)(i)(a), Eligible Orders, to provide that the following contingency order types would not be eligible for delivery via AUTOM: stop, stop limit market close, market on opening, limit on opening, and limit close.[50] Because the conversion of these contingency order types is not done electronically by AUTOM, such order types would not be eligible for electronic entry on the electronic limit order book. Previously, any limit order on the book that became due for execution against an inbound electronic order delivered via AUTOM was handled manually by the specialist; with the development and deployment of Book Match, such contingency orders may now be executed electronically, but would not be converted electronically. Thus, such orders would not be placed on the electronic limit order book. Customers wishing to submit such orders would be required to do so by way of representation by a Floor Broker.

Eligible order delivery size. In order to allow a greater number of orders to be delivered electronically to the Exchange via AUTOM, the Exchange proposes to amend Phlx Rules 1080(b)(i)(A), (B), and (C) to increase the maximum AUTOM order delivery size from 1,000 contracts to 5,000 contracts for all eligible order types. This increase would apply to both Streaming Quote Options and non-Streaming Quote Options.

2. Statutory Basis

The Exchange believes that its proposal to adopt Phlx XL is consistent with Section 6(b) of the Act[51] in general, and furthers the objectives of Section 6(b)(5) of the Act[52] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by creating an electronic trading platform designed to provide Exchange members with substantially enhanced incentives to quote competitively, increase the depth and liquidity in the Exchange's markets, and to allow the Exchange to remain competitive for order flow by providing order flow providers with an electronic trading platform that will assist them in fulfilling their duty of best execution on behalf of their customers.

The Exchange believes that the obligation for SQTs to quote in 60% of the series in all Streaming Quote Options in which they are assigned, and the requirement that specialists quote in 100% of the series in all Streaming Quote Options in which they are assigned, is consistent with the notion that market makers receive certain benefits for carrying out their duties because of those obligations. For example, with respect to margin treatment, market makers may obtain credit from lenders without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve system if the credit is to be used to finance a specialist or market maker's activities on a national securities exchange.[53] The Exchange believes that the affirmative obligation in the proposal, that SQTs and specialists hold themselves out as willing to buy and sell options for their own account on a regular and continuous basis, justifies this favorable treatment.

Additionally, the Exchange believes that the additional obligations of the specialist, such as the obligation to handle limit orders on the book; the obligation under the Linkage Plan to handle all inbound Linkage Orders and to send Satisfaction Orders on behalf of customer limit orders on the specialist's book; and the obligation, under certain circumstances, to allocate manually executed trades, justifies the proposed enhanced participation rights afforded

[49] Currently, and with respect to non-Streaming Quote Options under the instant proposal, AUTO–X participation would be assigned to Wheel Participants on a rotating basis, beginning at a random place on the rotational Wheel each day, from those participants signed-on in that listed option at that time. The Wheel rotates and assigns contracts depending upon the size of the order executed and the number of Wheel participants in a given option. *See* OFPA F–24.

[50] For a complete description of these order types, *see* Phlx Rule 1066.

[51] 15 U.S.C. 78f(b).

[52] 15 U.S.C. 78f(b)(5).

[53] *See* 12 CFR 221.5(c)(6).

to specialists in Streaming Quote Options.

The Exchange further believes that the proposed rule change regarding Book Match, in which orders and quotes interact directly with one another for execution, is consistent with Congress's stated goal in Section 11A(a)(1)(C)(v) of the Act [54] that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-Phlx-2003–59 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. All submissions should refer to File Number SR-Phlx-2003–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2003–59 and should be submitted on or before July 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–13403 Filed 6–9–04; 2:12 pm]

BILLING CODE 8010–01–P

[54] 15 U.S.C. 78k–1(a)(1)(C)(v).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49807; File No. SR–Phlx–2004–22]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Susquehanna Indices, LLP Disclaimer

June 4, 2003.

On March 22, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 1104A, which applies to indexes maintained by Susquehanna Indices, LLP.[3] The rule generally provides that Susquehanna makes no warranty, express or implied, to the results of SIG Investments Index. The Phlx is proposing to add a new index which it trades options on, to the disclaimer in Phlx Rule 1104A, the SIG Cable, Media & Entertainment Index.

The proposed rule change was published for comment in the **Federal Register** on May 3, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act [6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change should assist investors by clarifying the nature of any warranty, express or implied, as to results to be obtained by any person or entity when trading Phlx options on the SIG, Cable, Media & Entertainment Index.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2004–22) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that it approved Phlx Rule 1104A on July 7, 2003. *See* Securities Exchange Act Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (approving SR–Phlx–2003–21).

[4] *See* Securities Exchange Act Release No. 49605 (April 22, 2004), 69 FR 24209.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13415 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 15, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number (202) 395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: CDC Annual Report Guide.

No: 1253.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies.

Responses: 270.

Annual Burden: 7,560.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–13338 Filed 6–14–04; 8:45 am]

BILLING CODE 8025–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P. (''Applicant''), 4 Main Street, Suite 50, Los Altos, CA 94022, an SBIC Applicant under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2004)). Horizon Ventures Fund II, L.P. proposes to provide equity financing to Flexlogics, Inc., 555 Mathilda Avenue, Suite 100, Sunnyvale, CA 94086. The financing is contemplated for marketing, working capital and research and development.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, Associates of the Applicant currently owns greater than 10 percent of Flexlogics, Inc., and therefore Flexlogics, Inc. is considered an Associate of the Applicant as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 3, 2004.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 04–13339 Filed 6–14–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Telesoft Partners II SBIC, L.P., License No. 09/79–0432; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to Xambala, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P. and Telesoft NP Employee Fund, LLC, Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of Xambala, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 27, 2004.

Jeffrey Pierson,

Associate Administrator for Investment.

[FR Doc. 04–13340 Filed 6–14–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3574]

Federated States of Micronesia (Amendment #1)

In accordance with a correction notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 4, 2004, the above numbered declaration is hereby amended to clarify that the designation of Individual Assistance does not include the entire Yap State but only the island of Yap proper within Yap State. All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 28, 2004, and for economic injury the deadline is January 27, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 8, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–13427 Filed 6–14–04; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3587]

State of West Virginia

As a result of the President's major disaster declaration on June 7, 2004 I find that Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Jackson,

Kanawha, Lewis, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Nicholas, Putnam, Raleigh, Roane, Wayne, Webster, Wirt, and Wyoming Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, flooding, and landslides that occurred on May 27, 2004 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 6, 2004, and for loans for economic injury until the close of business on March 7, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Doddridge, Greenbrier, Harrison, Monroe, Pocahontas, Randolph, Ritchie, Summers, Upshur, and Wood Counties in the State of West Virginia; Boyd, Lawrence, Martin and Pike Counties in the Commonwealth of Kentucky; Gallia, Lawrence, and Meigs Counties in the State of Ohio; and Bland, Buchanan, Giles, and Tazewell Counties in the Commonwealth of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	5.500
Businesses and non-profit organizations without credit available elsewhere	2.750
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The number assigned to this disaster for physical damage is 358706. For economic injury the number is 9ZH400 for West Virginia, 9ZH500 for Kentucky, 9ZH600 for Ohio, and 9ZH700 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 8, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–13425 Filed 6–14–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4745]

30-Day Notice of Proposed Information Collection: Form DS–4048, Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act; OMB Control Number 1405–XXXX

ACTION: Notice of OMB submission and request for public comment.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act.
- *OMB Control Number:* None.
- *Type of Request:* Existing Collection in Use without an OMB Control Number.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- *Form Number:* DS–4048.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 20.
- *Estimated Number of Responses:* 20.
- *Average Hours Per Response:* 60 hours.
- *Total Estimated Burden:* 1200 hours.
- *Frequency:* Once per year per respondent.
- *Obligation to Respond:* Voluntary.

DATE(S): Comments may be submitted to the Office of Management and Budget (OMB) by July 15, 2004.

ADDRESSES: Comments and questions should be directed to Alex Hunt, the State Department Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202–395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Michael T. Dixon, Director, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA–1, Room H1200, 2401 E Street, NW., Washington, DC 20522–0112 (202) 663–2700. E-mail: *DixonMT@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The information will be used to prepare an annual report to Congress regarding arms sales proposals covering all Foreign Military Sales (FMS) and licensed commercial exports of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval during the current calendar year in accordance with § 25 of the Arms Export Control Act (AECA) (22 U.S.C. 2765).

Methodology: Respondents may submit the information by e-mail using DS–4048, an Excel electronic spreadsheet, or by letter using the fax or postal mail.

Dated: May 26, 2004.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 04–13468 Filed 6–14–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4708]

Notice of Receipt of Cultural Property Request From the Government of the Republic of Colombia

The Government of the Republic of Colombia, concerned that its cultural heritage is in jeopardy from pillage, made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on April 21, 2004, by the United States Department of State. It seeks U.S. import restrictions on pre-Columbian archaeological material including, but not limited to, certain categories of stone sculpture, including rock art; pottery, including figurines and containers; gold; and certain categories of objects of perishable materials, including wood, bone, and textile. The request also seeks similar import restrictions on Colonial period artifacts, including, but not limited to, oil paintings, polychrome sculpture, and silver objects of decorative and liturgical purposes.

Information about the Act and U.S. implementation of the 1970 UNESCO Convention, as well as a public summary of the Colombia Request can be found at *http://exchanges.state.gov/education/culprop*.

Dated: June 3, 2004.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–13467 Filed 6–14–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 4707]

Advisory Committee on Historical Diplomatic Documentation Notice of Meeting

Summary: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, July 12–13, 2004, in Conference Room 1105. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U. S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) no later than June 28, 2004 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Gloria Walker for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, July 12, 2004, in Room 1105 to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the Foreign Relations series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, July 12, 2004, and 9 a.m. until 1 p.m. on Tuesday, July 13, 2004, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: May 28, 2004.

Marc J. Susser,

Executive Secretary, Department of State.

[FR Doc. 04–13466 Filed 6–14–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

AMBER Plan Implementation Assistance Program; Request for Applications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications.

SUMMARY: This document requests applications for assistance from public agencies to implement State and local departments of transportation aspects of AMBER Plan Programs in each State. The FHWA AMBER Plan Implementation Assistance Program will provide grants to States (including Puerto Rico and the District of Columbia) to implement plans and programs that have been developed to include State and local transportation agencies and their resources into AMBER Plan Programs. The intent is to provide funds to States for the purpose of implementing systems and procedures that have been identified as necessary to incorporate various traveler information systems such as changeable message signs (CMS) in the issuance of child abduction or AMBER Alerts.

DATES: Applications for AMBER Plan Implementation Assistance must be received prior to July 16, 2004, to receive funding in fiscal year 2004. Applications for AMBER Plan Implementation Assistance must be received prior to July 15, 2005, to receive funding in fiscal year 2005. Decisions regarding the acceptance of specific applications for funding will be made within 30 business days of receipt.

ADDRESSES: Applications for AMBER Plan Implementation Assistance should be submitted electronically via e-mail to *Amberplan@fhwa.dot.gov,* or mailed directly to the Federal Highway Administration, Office of Transportation Management—AMBER Plan Implementation (HOTM–1), 400 Seventh St., SW., Room 3401, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rupert, Office of Transportation Management (HOTM–1), (202) 366–2194; or Ms. Gloria Hardiman-Tobin, Office of Chief Counsel (HCC–40), (202) 366–0780; Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

The document may also be viewed at the FHWA's Operations home page at *http://www.ops.fhwa.dot.gov.*

Background

The AMBER Plan Program is a voluntary program where law enforcement agencies partner with broadcasters to issue an urgent bulletin in the most serious child abduction cases. These bulletins notify the public

about abductions of children. The FHWA recognizes the value of the AMBER Plan Program and fully supports the State and local governments' choice to implement this program.

Alerts of serious child abductions may be communicated through various means including radio and television stations, highway advisory radio, changeable message signs (CMS), and other media. Under certain circumstances, using CMS to display child abduction messages as part of an AMBER Plan Program has been determined to be consistent with FHWA policy governing the use of CMS and the type of messages that are displayed. The FHWA issued a policy memorandum in August 2002 that supports the use of CMS for AMBER Alerts. This memorandum may be viewed at the following url: *http://www.fhwa.dot.gov/legsregs/directives/policy/AMBERmemo.htm.*

On February 12, 2003, the FHWA published a notice in the **Federal Register** at *68 FR 7164,* requesting applications from States for AMBER Plan Program Assistance. These grants of up to $125,000 were to facilitate the inclusion of State and local transportation agencies into existing or proposed AMBER Plan Programs. Of specific interest to the FHWA were the development of policies and procedures to provide specific guidance on displaying AMBER Alert or child abduction messages on CMS and the improvement of communication systems and protocols between public safety and transportation agencies. The notice expressly prohibited the procurement of roadside or in-vehicle devices with AMBER Plan Program Assistance funding. As of June 1, 2004, 37 States and the District of Columbia have received funding for AMBER Plan Program Assistance. The remaining 13 States and Puerto Rico have until July 16, 2004 to apply for AMBER Plan Program Assistance grants.

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 (Pub. L. 108–21, 117 Stat. 650) incorporated the AMBER Plan Program Assistance into section 303(b). Section 303(c) of the PROTECT Act of 2003 provides for implementation grants and is the basis for this AMBER Plan Implementation Assistance Program.

Objectives of the AMBER Plan Implementation Assistance Program

The FHWA AMBER Plan Implementation Assistance Program will provide up to $20 million in total grants to States (including Puerto Rico and the District of Columbia) to implement enhancements of notification or communications systems along highways for alerts and other information for the recovery of abducted children. The intent is to improve the overall capability of communicating child abduction, AMBER Alerts and other important information to motorists using CMS or other traveler information systems.

Each State (including Puerto Rico and the District of Columbia) may apply for a grant of up to $400,000 to be used in implementing its plan or program developed for the use of CMS or other motorist information systems to notify motorists about abductions of children. A State shall be eligible for an AMBER Plan Implementation Assistance Program grant if the Secretary of Transportation, or his delegated official, determines that the State has developed a State program in accordance with section 303(b) of the PROTECT Act of 2003.

Funding

The instrument to provide funding, on a cost reimbursable basis, will be a Federal-aid project agreement. Federal funding authority is derived from section 303(h) of the PROTECT Act of 2003. Actual award of funds will be subject to funding availability.

Federal funding for AMBER Plan Implementation Assistance may be used as necessary to implement local plans and programs developed in accordance with section 303(b) of the PROTECT Act of 2003. Eligible activities may include, but are not limited to: acquisition and installation of CMS and other roadside motorist information equipment; communications and power for roadside devices; systems necessary to provide for wide area alerts to motorists; enhanced communications between public safety, law enforcement and transportation agencies to improve notifications of child abductions or provide for 24-hour operation of motorist alert systems; and other services or systems to support the timely notification to motorists about abductions of children.

Matching Share/Cost Sharing

Section 303(d) of the PROTECT Act of 2003 mandates that the Federal share of the cost of activities supported by an AMBER Plan Assistance Program grant may not exceed 80 percent. The remaining minimum twenty percent matching share must be from non-federally derived funding sources, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the project for a substantial period, as long as such personnel are not otherwise supported with Federal funds.[1] The non-federally derived funding may come from State, local government, or private sector partners. However, funding identified to support continued operations, maintenance, and management of the system will not be considered as part of the partnership's cost-share contribution.

Grantees shall maintain financial records that detail the activities provided by Federal funding, indicating appropriate total matching requirements, as described under the heading, Matching Share/Cost Sharing. The FHWA and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal funds and non-Federal contributions. Grantees and sub-grantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised Office of Management and Budget (OMB) Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, dated June 30, 1997, as revised, that is available at the following url: *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* The audits shall be conducted by an independent auditor in accordance with generally accepted government auditing standards covering financial audits found at 49 CFR 18.26.

Instructions to Applicants

An application for AMBER Plan Implementation Assistance Program shall consist of two parts: (1) a proposed technical approach; and (2) a financial plan. Together these two elements must describe the proposed activities to be conducted with this funding. The complete application, excluding appendices, shall not exceed 15 pages in length, including the Technical Approach, the Financial Plan, the title page, index, tables and any appendices. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point.

Applications shall be submitted in an electronic format compatible with Microsoft Office 2000. The cover sheet or title page of the application shall include the name, address, phone number, and e-mail address of an individual to whom correspondence and questions about the application may be directed. Any portion of the application or its contents that may

[1] See Consolidated Appropriations Act, 2004, Pub. L. 108–99, 118 Stat. 3, 289.

contain proprietary information shall be clearly indicated; otherwise, the application and its contents shall be non-proprietary.

Application Content

Applicants must submit an acceptable Technical Approach and Financial Plan that together provide sound evidence that the objectives of this program can successfully be completed in a timely fashion.

Applications should be organized into the following two sections:

1. Technical Approach

The application should briefly summarize the plan that was developed for the use of CMS or other motorist information systems to notify motorists about abductions of children, and identify the activities that are to be funded with this grant. The plan should be included as an appendix to the application. The following paragraphs illustrate the general information that applicants should include in this section of the application.

(A) The application should identify the specific activities to be funded by the grant and their relation to the plan that was developed for the use of CMS or other motorist information systems to notify motorists about abductions of children, in accordance with section 303(b) of the PROTECT Act of 2003.

(B) The application should include a schedule or timeline for completion of the proposed activities for which the grant will be used. The schedule should include milestone events or targeted activities, especially indicating any activities that require FHWA actions or actions by organizations typically not influenced by the applying agency.

2. Financial Plan

The Financial Plan should demonstrate that sufficient funding is available to successfully complete all aspects of the proposed implementation as identified in the plan described in section 1. Additionally, the Financial Plan shall provide the financial information described under the heading, Matching Share/Cost Sharing.

An acceptable Financial Plan should:

(A) Provide a clear identification of the proposed funding to implement the plan that was developed for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. The Financial Plan shall include a commitment that no more than 80 percent of the total cost will be supported by Federal funds. Financial commitments from other public agencies and from private firms should be documented appropriately, for example, through memorandums of understanding.

(B) Describe how the proposed activities to be funded will be conducted to ensure their timely implementation and the continued long-term operation.

(C) As appropriate, include corresponding public and/or private investments that minimize the relative percentage and amount of Federal funds. Also include evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

Authority: Sec. 303, Pub. L. 108–21, 117 Stat. 650, 662–663, 42 U.S.C. 5791b; 23 U.S.C. 315.

Issued on: June 7, 2004.

J. Richard Capka,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 04–13391 Filed 6–14–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for a Proposed Transit Improvement Project in Branson, Missouri

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: FTA is issuing this notice to advise agencies and the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transit improvement project in Branson, MO.

DATES: *Scoping Meeting:* A scoping meeting is scheduled for resource agencies at 2 p.m. on Tuesday, June 29, 2004 at the Branson City Hall Municipal Courtroom (110 West Maddux Street; Branson, MO) and will be followed by a public open house at the same location and date from 4 to 7 p.m. (to be advertised locally). Oral and written comments may be made at these sessions. Project staff will be available at the sessions for informational discussion and to answer questions. These sessions will identify the core study-area boundary; the study schedule; the public involvement plan; the problem statement; the project purpose and need; the study goals and objectives; effectiveness measures, as well as identify the range of alternatives to be considered in the study. Input will be solicited at both sessions to focus the environmental investigations. The meeting location is accessible to individuals with disabilities. Individuals with special needs contact Cheryl Ford, Engineering Department; City of Branson, MO at (417) 337–8559. Comment Due Date: Written comments on the scope of the EIS should be sent to the Branson City Engineer at **ADDRESSES** given below by July 30, 2004.

ADDRESSES: Written comments on the project scope should be forwarded to: Joni Roeseler, Project Manager; Federal Transit Administration, Region VII; 901 Locust Street, Room 404; Kansas City, Missouri 64106; Telephone: (816) 329–3936; Email: *joan.roeseler@fta.dot.gov*; or: David Miller, City Engineer; City of Branson; 110 West Maddux Street, Suite 310; Branson, Missouri 65616; Telephone: (417) 337–8559; Email: *dmiller@cityofbranson.org*.

FOR FURTHER INFORMATION CONTACT: the FTA or the city of Branson personnel identified at the **ADDRESSES** given above. You can also visit the City of Branson website, identified as *www.branson.com* where a project page is expected to be established at the time of the scoping meeting. Scoping Package: An information packet, referred to as the Scoping Booklet, will be distributed to all public agencies and interested individuals and will be available at the meetings. Others may request the Scoping Booklet by contacting the Branson City Engineer at **ADDRESSES** given below. If you wish to be placed on the mailing list to receive additional information as the project develops, contact the Branson City Engineer at **ADDRESSES** given below.

SUPPLEMENTARY INFORMATION: FTA, in cooperation with the city of Branson and the Missouri Department of Transportation (MoDOT), will prepare an EIS on a proposal to address transit improvements in the city of Branson, MO. The EIS will include identification and evaluation of all reasonable multi-modal alternatives as defined under the National Environmental Policy Act (NEPA) scoping process. This alternatives analysis and NEPA evaluation process is expected to result in the selection of a locally preferred transit alternative, which may include a fixed guideway alternative.

Branson, Missouri, with a population of about 6,000, accommodates over seven million visitors a year. These visitors make trips to multiple venues (theaters, lodging, restaurants, *etc.*), which are concentrated along State Route 76. This roadway, referred to as ''The Strip'', offers a single lane of vehicular flow in each direction divided by a two-way left-turn lane. The

roadway is paralleled by narrow paved shoulders used as sidewalks and by multiple overhead utilities situated adjacent to intensive development. Only a handful of signalized intersections exist along the Strip, complicating the ability of pedestrians to get across the street. Options are limited to further expand the roadway network to address the considerable traffic congestion that remains on the Strip from single-occupant autos and tour buses. No public transit service is currently available in the corridor. The problem is expected to grow worse over time as venues continue to grow in popularity and as more venues are added.

Transit needs will be evaluated in this corridor to address the congestion problems along the Strip. The core study-area boundary involves a roughly ten-mile-long corridor. It is generally bounded: On the north by the Red Route west of Roark Creek and the Missouri and North Arkansas Railroad east of Roark Creek; on the east by the rail line; on the south by parkland paralleling Lake Taneycomo and the Yellow Route; and on the west by the Taney/Stone County line. Alternatives to be considered will include: (1) Taking no action (no-build); (2) transportation systems management; (3) transit; (4) fixed guideway transit (including elevated options with park-n-ride facilities and feeder bus/shuttle vans); and (5) other alternatives discovered during the scoping process.

The social, economic, and environmental effects of the transit options will be evaluated in the project study. The impact areas to be addressed include: Land use effects; visual/aesthetic effects; community, business and economic impacts; traffic and parking; public safety; utilities effects; relocations; water quality; floodplains; natural systems impacts; air quality; noise and vibration; energy impacts; cultural and historic resources; etc. Potential environmental justice issues and financial considerations will also be addressed along with secondary, cumulative and construction impacts.

In accordance with FTA policy, all federal laws, regulations, and executive orders affecting project development including but not limited to the regulations of the Council on Environmental Quality and FTA regulations implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771) the 1990 Clean Air Act Amendments, Section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and Section 4(f) of the DOT Act, will be addressed. In addition, FTA New Starts regulation (49 CFR part 611) will be applied, which requires the submission of specific information to FTA from the applicant to support initiating preliminary engineering in conjunction with the NEPA process.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The study will include a number of public involvement outreach activities. Letters setting out the problem statement, purpose and need, project goals and objectives, effectiveness measures, and describing the range of alternatives to be considered along with the study schedule will be sent to appropriate federal, state, and local agencies. A Project Oversight Committee (POC), providing input from a broad range of community interests, is being established and will be furnished with the same information.

Comments and suggestions are invited from all interested parties to assist in addressing the full range of alternatives and to identify any significant potential project impacts. In addition, a public hearing will be held after the Draft EIS has been circulated for public and agency review and comment. Comments or questions concerning the proposed action and the Draft EIS should be directed to the FTA at the address provided above.

Issued on: June 9, 2004.

Mokhtee Ahmed,

Regional Administrator.

[FR Doc. 04–13471 Filed 6–14–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18039]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, as part of the OMB approval process, Federal agencies must solicit public comments on proposed collections of information.

This document describes a collection of information for which NHTSA seeks emergency processing for approval.

DATES: Comments must be received on or before August 16, 2004.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her Fax number is: (202) 366–3820. You may send mail to her at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day public comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection 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.

In compliance with these requirements, NHTSA asks for public comment on the following collection of information.

Information To Ensure Safety of Hydrogen Fueled Vehicles

Type of Request—Emergency processing (5 CFR 1320.13).

OMB Clearance Number—None.

Form Number—This collection of information would use no standard forms.

Requested Expiration Date of Approval—90 days from date of approval.

Summary of the Collection of Information—In order to fulfill its statutory responsibility to reduce traffic accidents and deaths and injuries resulting from traffic accidents, NHTSA has begun to focus on the safe use of hydrogen as a motor vehicle fuel. To ensure that the hydrogen fueled vehicles that will soon appear on the Nation's highways meet the need for motor vehicle safety, NHTSA plans to ask motor vehicle manufacturers for information about measures each vehicle manufacturer has taken to ensure the safety of hydrogen fueled vehicles. Specifically, NHTSA will ask for information on the steps and actions the vehicle manufacturer is taking to ensure the safety of these vehicles, including refueling issues. NHTSA is also asking that the manufacturers identify those vehicle safety-related issues that they believe must be addressed in the future in order to help assure that production of hydrogen fueled vehicles are safe for public use.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—NHTSA will send letters to ten motor vehicle manufacturers that have plans to manufacture hydrogen fueled vehicles. This is a one time collection of information. The submission of information in response to this request will be voluntary.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that it will take each manufacturer 30 hours to provide information on safety in its hydrogen fueled vehicles. Thus, NHTSA estimates that the total burden hours on the public will be 300 hours. There are no recordkeeping burdens associated with this collection.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: June 9, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–13472 Filed 6–14–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 3, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 15, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0191.

Form Number: IRS Form 4952.

Type of Review: Revision.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 800,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	39 min.
Learning about the law or the form.	12 min.
Preparing the form	24 min.
Copying, assembling, and sending the form to the IRS.	13 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,700,000 hours.

OMB Number: 1545–0199.

Form Number: IRS Form 5306–A.

Type of Review: Revision.

Title: Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

Description: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan or Savings Incentive Match Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	15 hr., 46 min.
Learning about the law or the form.	1 hr., 23 min.
Preparing, copying, assembling, and sending the form to the IRS.	1 hr., 42 min.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 94,400 hours.

OMB Number: 1545–0409.

Form Number: IRS Forms 211/211(SP).

Type of Review: Extension.

Title: Form 211: Application for Reward for Original Information; and Form 211(SP): Solicitud de Recompensa por Informacion Original (Spanish Version).

Description: Forms 211/211(SP) are the official application forms used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code (IRC) 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Respondents: Individuals or households.

Estimated Number of Respondents: 11,200.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1545–0800.

Regulation Project Number: Reg. 601.601.

Type of Review: Extension.

Title: Rules and Regulations.

Description: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal

Government, State, local or tribal government.

Estimated Number of Respondents: 600.

Estimated Burden Hours Respondent: 1 hour, 30minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545–0982.

Regulation Project Number: LR–77–86 Final (TD 8124).

Type of Review: Extension.

Title: Certain Elections under the Tax Reform Act of 1986.

Description: These regulations establish various elections with respect to which interim guidance on the time and manner of making the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, local or tribal government.

Estimated Number of Respondents: 114,710.

Estimated Burden Hours Respondent: 15 minutes.

Estimated Total Reporting Burden: 28,678 hours.

OMB Number: 1545–1331.

Regulation Project Number: PS–55–89 Final.

Type of Review: Extension.

Title: General Asset Accounts under the Accelerated Cost Recovery System.

Description: The regulations describe the time and manner of making the election described in Internal Revenue Code (IRC) section 168(i)(4). Basic information regarding this election.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 250 hours.

OMB Number: 1545–1413.

Regulation Project Number: IA–30–95 Final.

Type of Review: Extension.

Title: Reporting of Nonpayroll Withheld Tax Liabilities.

Description: These regulations concern the Secretary's authority to require a return of tax under section 6011 and provide for the requirement of a return by persons deducting and withholding income tax from ''Nonpayroll'' payments.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, local or tribal government.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1600.

Regulation Project Number: REG–251703–96 Final.

Type of Review: Extension.

Title: Residence of Trusts and Estates—7701.

Description: This regulation provides the procedure and requirements for making the election to remain a domestic trust.

Respondents: Individuals or households.

Estimated Number of Respondents: 222.

Estimated Burden Hours Respondent: 31 minutes.

Frequency of response: Other (one time).

Estimated Total Reporting Burden: 114 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–13401 Filed 6–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 7, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 15, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0015.

Form Number: IRS Form 706.

Type of Review: Revision.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

Description: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by Internal Revenue Code (IRC) section 2001 and the Federal Generation-Skipping Transfer (GST) tax imposed by section 2601. IS uses the information to enforce these taxes and to verify that the tax has been properly computer.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 117,000.

Estimated Burden Hours Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
706	2 hr., 10 min.	1 hr., 28	4 hr., 1 min.	48 min.
Schedule A	19 min.	15 min.	9 min.	20 min.
A–1	45 min.	25 min.	58 min.	48 min.
B	19 min.	9 min.	15 min.	20 min.
C	13 min.	1 min.	8 min.	20 min.
D	6 min.	6 min.	8 min.	20 min.
E	39 min.	7 min.	24 min.	20 min.
F	33 min.	7 min.	21 min.	20 min.
G	26 min.	22 min.	11 min.	13 min.
H	26 min.	7 min.	9 min.	13 min.
I	26 min.	27 min.	11 min.	20 min.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
J	26 min.	7 min.	15 min.	20 min.
K	26 min.	10 min.	9 min.	20 min.
L	13 min.	4 min.	9 min.	20 min.
M	13 min.	31 min.	24 min.	20 min.
O	19 min.	11 min.	18 min.	16 min.
P	6 min.	14 min.	18 min.	13 min.
Q	6 min.	9 min.	11 min.	13 min.
Q Worksheet	6 min.	9 min.	58 min.	20 min.
R	19 min.	34 min.	1 hr., 1 min.	48 min.
R–1	6 min.	29 min.	24 min.	20 min.
U	19 min.	3 min.	29 min.	20 min.
Cont. Schedule	19 min.	2 min.	7 min.	20 min.

Frequency of response: Other (once).

Estimated Total Reporting/ Recordkeeping Burden: 2,077,795 hours.

OMB Number: 1545–0035.

Form Number: IRS Forms 943, 043–PR, 943–A, and 943A–PR.

Type of Review: Revision.

Title: Employer's Annual Tax Return for Agricultural Employees.

Description: Agricultural employers must prepare and file Form 943 and Form 943–PR (Puerto Rico only) to report and pay FCA taxes and (943 only) income tax voluntarily withheld. Agricultural employers may attach Forms 943–A and 943A–PR to Forms 943 and 943–PR to show their tax liabilities for semiweekly periods. The information is used to verify that the correct tax has been paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 684,444.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling and sending the form to the IRS
943	10 hr., 31 min.	40 min.	1 hr., 47min	16 min.
943–A	8 hr., 22 min.	0 min.	0 min.	8 min.
943–V	0 min.	0 min.	20 min.	0 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 8,972,974 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW.,Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–13402 Filed 6–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8863

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 8863, Education Credits (Hope and Lifetime Learning Credits).

DATES: Written comments should be received on or before August 16, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Education Credits (Hope and Lifetime Learning Credits).

OMB Number: 1545–1618.

Form Number: 8863.

Abstract: Section 25A of the Internal Revenue Code allows for two education credits, the Hope credit and the lifetime learning credit. Form 8863 will be used to compute the amount of the allowable credits. The IRS will use the information on the form to verify that respondents correctly computed their education credits.

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 Respondents: 12,000,000.

Estimated Time Per Respondent: 1 hr., 6 min.

Estimated Total Annual Burden Hours: 13,210,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–13476 Filed 6–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5074

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5074, Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).

DATES: Written comments should be received on or before August 16, 2004 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: Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).

OMB Number: 1545–0803.

Form Number: Form 5074.

Abstract: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 or more in adjusted gross income from U.S. sources and $5,000 or more in gross income from Guam or the Commonwealth of Northern Mariana Islands (CNMI). The data is used by IRS to allocate income tax due to Guam or the DNMI as required by 26 U.S.C. 7654.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 4 hrs. 1 min.

Estimated Total Annual Burden Hours: 210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13477 Filed 6–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3800

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 3800, General Business Credit.

DATES: Written comments should be received on or before August 16, 2004 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: General Business Credit.

OMB Number: 1545–0895.

Form Number: Form 3800.

Abstract: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, work opportunity credit, welfare-to-work credit, alcohol fuel credit, research credit, low-income housing

credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Current Actions: A new line has been added to Form 3800 for the new markets tax credit.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms and individuals.

Estimated Number of Respondents: 272,197.

Estimated Time Per Respondent: 20 hours., 50 minutes.

Estimated Total Annual Burden Hours: 5,669,864.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13478 Filed 6–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–C, Farmers' Cooperative Association Income Tax Return.

DATES: Written comments should be received on or before August 16, 2004, 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: Farmers' Cooperative Association Income Tax Return.

OMB Number: 1545–0051.

Form Number: Form 990–C.

Abstract: Form 990–C is used by farmers' cooperatives to report the tax imposed by Internal Revenue Code section 1381. The IRS uses the information on the form to determine whether the cooperative has correctly computed and reported its income tax liability.

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: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 5,600.

Estimated Time Per Respondent: 148 hours, 9 minutes.

Estimated Total Annual Burden Hours: 829,640.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–13479 Filed 6–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Human Resources and 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 Office of Human Resources and Administration (OHR&A), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The

PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0117'' in any correspondence.

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. 2900–0117'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Inquiry Concerning Application for Employment, VA Form Letter 5–127.

OMB Control Number: 2900–0117.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 5–127 is used to verify qualifications of applicants for employment at the VA. This information is obtained from individuals who have knowledge of the applicants' past work record, performance, and character. VA personnel officials use the information to determine the applicant's suitability and qualifications for employment.

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 February 25, 2004, at page 8747.

Affected Public: Business or other for-profit, Individuals or households, State, Local or Tribal Government.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,500.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13437 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0300]

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 July 15, 2004.

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. 2900–0300.'' 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. 2900–0300'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

OMB Control Number: 2900–0300.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–4555d is completed by disabled veterans to apply for special housing and adaptations to dwellings. Grants are available to assist disabled veterans in making adaptations to their current residences or one which they intend to live in as long as the veteran or a member of the veteran's family owns the home.

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 February 25, 2004, at pages 8747–8748.

Affected Public: Individuals or households.

Estimated Annual Burden: 25 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13438 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility for burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0003'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must

obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–530 is used to apply for burial benefits, including transportation. The information is used to determine if a deceased veteran's had appropriate service and/or disability and that the claimant has made payment for burial or has contracted to make appropriate payment.

Affected Public: Individuals or households, Businesses or other for profit.

Estimated Annual Burden: 100,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 300,000.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13439 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine net income derived from farming.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0095'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4165 is used to gather information which is necessary to determine a claimant's countable annual income and available assets due to farm operations. Eligibility to income-based benefits cannot be determined without complete information about a claimant's income. Farm income is not necessarily received on a weekly or monthly basis, and farm operating expenses must be considered in determining income and total assets. If eligibility exists, the information will be used to determine the proper rate of benefits.

Affected Public: Individuals or households and Farms.

Estimated Annual Burden: 1,038 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,075.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13440 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0036]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if a decision of presumptive death can be made for benefit payment purposes.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0036'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Manageminformation they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Disappearance, VA Form 21–1775.

OMB Control Number: 2900–0036.

Type of Review: Extension of a currently approved collection.

Abstract: A formal presumption of death is required when a veteran has been missing for over seven years. Since no state law providing presumption of death is applicable to VA benefits, VA Form 21–1775 is used to gather the necessary information to determine if a decision of presumptive death can be made for benefit payment purposes.

Affected Public: Individuals or households.

Estimated Annual Burden: 28 hours.

Estimated Average Burden Per Respondent: 2 hours 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 10.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13441 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility to benefits for dependent parents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Dependency of Parent(s), VA Form 21–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–509 is used to gather income and dependency information from claimants who are seeking payment of benefits as or for a dependent parent. The form is completed by veterans seeking to establish his/her parent(s) as dependents as well as by a surviving parent seeking death compensation.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 8,000

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13442 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to confirm marital status and dependent children.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0043'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to obtain information to confirm marital status and existence of any dependent child(ren). The information is used by VA to determine eligibility and rate of payment for veterans and surviving spouses who are entitled to an additional allowance for dependents.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 226,000.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13443 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information to complete the compliance inspection report for purchase or construction of residential property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Compliance Inspection Report, VA Form 26–1839.

OMB Control Number: 2900–0041.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by fee compliance inspectors to report acceptability of residential construction and conformity with standards prescribed for new housing proposed as security for loans guaranty. VA uses the information to determine whether completion of all onsite and offsite improvements are completed in accordance with plans and specifications used in the appraisal of the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,925 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,500.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13444 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.

The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0020.'' 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. 2900–0020'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Designation of Beneficiary (Government Life Insurance), VA Form 29–336.

OMB Control Number: 2900–0020.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–336 is used by the insured to designate a beneficiary and select an optional settlement to be used when the Government Life Insurance matures by death.

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 25, 2004 at page 15438.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13445 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

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 July 15, 2004.

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. 2900–0325.'' 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. 2900–0325'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA will make payments of educational assistance in advance when the veteran, servicemember, reservist, or eligible person has specifically requested such payment. The school in which the student is accepted or enrolled delivers the advance payment to the student and is required to certify the delivers to VA. VA Form 22–1999V serves as the certificate of delivery of advance payment and to report any changes in the student's training status. The schools are required to report the following to VA: (1) The failure of the student to enroll; (2) an interruption or termination of attendance; or, (3) a finding of unsatisfactory attendance, conduct or progress. If the information were not collected or collected less often, VA will be unable to prevent inaccurate payments.

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 February 2, 2004, at pages 4987–4988.

Affected Public: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Estimated Annual Burden: 1,133 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Estimated Total Number of Respondents: 13,600.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13446 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0162.'' 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. 2900–0162'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and individuals on active duty and reservist training may receive benefits for enrolling in or pursuing approved vocational flight training. Benefits are limited to 60 percent of the approved cost of the courses, including solo flight training. Payments are based on the number of hours of flight training completed during each month. Benefits are not payable if the veteran, individual on active or reservist terminates training. VA Form 22–6553c serves as a report of flight training pursued and the termination of training.

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 February 25, 2004, at page 8746.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions.

Estimated Annual Burden: 7,315 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,660.

Estimated Annual Responses: 14,630.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13447 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0495.'' 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. 2900–0495'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Marital Status Questionnaire, VA Form 21–0537.

OMB Control Number: 2900–0495.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0537 is used to confirm the marital status of a surviving spouse receiving dependency and indemnity compensation benefits (DIC). If a surviving spouse remarries, he or she is no longer entitled to DIC unless the marriage began after age 57 or has been terminated.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 25, 2004, at page 15438.

Affected Public: Individuals or households.

Estimated Annual Burden: 189 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,270.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13448 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0012.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0012'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Cash Surrender or Policy Loan, Government Life Insurance, VA Forms 29–1546 and 29–1546–1.

OMB Control Number: 2900–0012.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Forms 29–1546 and 29–1546–1 is used to determine the insured's eligibility for cash surrender or loan.

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 February 25, 2004, at pages 8746–8747.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 29,636.

Dated: June 2, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–13449 Filed 6–14–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
June 15, 2004

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0059; FRL–7630–8]

RIN 2060–AG–63

National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) with a site-rating of more than 500 brake horsepower (HP). We have identified stationary RICE as major sources of hazardous air pollutants (HAP) emissions such as formaldehyde, acrolein, methanol, and acetaldehyde. The NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for RICE. We estimate that 40 percent of stationary RICE will be located at major sources and thus, subject to the final rule. As a result, the environmental, energy, and economic impacts presented in this preamble reflect these estimates. The final rule will protect public health by reducing exposure to air pollution, by reducing total national HAP emissions by an estimated 5,600 tons per year (tpy) in the 5th year after the rule is promulgated. The emissions reductions achieved by these standards will provide protection to the public and achieve a primary goal of the CAA.

DATES: The final rule is effective August 16, 2004. The incorporation by reference of certain publications listed in the final rule are approved by the Director of the Federal Register as of August 16, 2004.

ADDRESSES: *Docket.* Docket ID No. OAR–2002–0059 and Docket ID No. A–95–35 contain supporting information used in developing the standards. The dockets are located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B102, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. For information concerning the analyses performed in developing the NESHAP, contact Mr. Sims Roy, Combustion Group, Emission Standards Division (MD–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5263; facsimile number (919) 541–5450; electronic mail address *roy.sims@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC [1]	NAICS [2]	Examples of regulated entities
Any industry using a stationary RICE as defined in the final rule.	4911	2211	Electric power generation, transmission, or distribution.
	4922	48621	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	9711	92811	National security.

[1] Standard Industrial Classification.
[2] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.6585 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0059 and Docket ID No. A–95–35. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. 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 Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

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 above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 16, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal

proceeding brought to enforce these requirements.

Background Information Document. The EPA proposed the NESHAP for stationary RICE on December 19, 2002 (67 FR 77830), and received 64 comment letters on the proposal. A background information document (BID) (''National Emission Standards for Stationary Reciprocating Internal Combustion Engines, Summary of Public Comments and Responses,'') containing EPA's responses to each public comment is available in Docket ID Nos. OAR–2002–0059 and A–95–35.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. What Are the Health Effects Associated with HAP from Stationary RICE?
D. What Is the Regulatory Development Background of the Source Category?
II. Summary of the Final Rule
A. What Sources Are Subject to the Final Rule?
B. What Source Categories and Subcategories Are Affected by the Final Rule?
C. What Are the Primary Sources of HAP Emissions and What Are the Emissions?
D. What Are the Emission Limitations and Operating Limitations?
E. What Are the Initial Compliance Requirements?
F. What Are the Continuous Compliance Provisions?
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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The stationary RICE source category was listed as a major source category on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing sources in listed source categories. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all regulated sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower emitting sources in each source category or subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP From Stationary RICE?

Emission data collected during development of the NESHAP show that several HAP are emitted from stationary RICE. These HAP emissions are formed during combustion or result from HAP compounds contained in the fuel burned.

The HAP which have been measured in emission tests conducted on natural gas fired and distillate oil fired RICE include: 1,1,2,2-tetrachloroethane, 1,3-butadiene, 2,2,4-trimethylpentane, acetaldehyde, acrolein, benzene, chlorobenzene, chloroethane, ethylbenzene, formaldehyde, methanol, methylene chloride, n-hexane, naphthalene, polycyclic aromatic hydrocarbons, polycyclic organic matter, styrene, tetrachloroethane, toluene, and xylene. Metallic HAP from distillate oil fired stationary RICE that have been measured are: cadmium, chromium, lead, manganese, mercury, nickel, and selenium.

Although numerous HAP may be emitted from RICE, only a few account for essentially all of the mass of HAP emissions from stationary RICE. These HAP are: Formaldehyde, acrolein, methanol, and acetaldehyde.

The HAP emitted in the largest quantities from stationary RICE is formaldehyde. Formaldehyde is a probable human carcinogen and can cause irritation of the eyes and respiratory tract, coughing, dry throat, tightening of the chest, headache, and heart palpitations. Acute inhalation has caused bronchitis, pulmonary edema, pneumonitis, pneumonia, and death due to respiratory failure. Long-term exposure can cause dermatitis and sensitization of the skin and respiratory tract.

Acrolein is a cytotoxic agent, a powerful lacrimating agent, and a severe tissue irritant. Acute exposure to acrolein can cause severe irritation or corrosion of the eyes, nose, throat, and lungs, with tearing, pain in the chest, and delayed-onset pulmonary injury with depressed pulmonary function. Chronic exposure to acrolein can cause skin sensitization and contact dermatitis. Acrolein is not considered carcinogenic to humans.

Humans are very sensitive to the toxic effects of methanol including formic acidaemia, metabolic acidosis, ocular toxicity, nervous system depression,

blindness, coma, and death. A majority of the available information on methanol toxicity in humans is based on acute rather than long-term exposure. However, recent animal studies also indicate potential reproductive and developmental health consequences following chronic exposure to methanol in both mice and primates. Methanol has not been classified with respect to carcinogenicity.

The health effects for acetaldehyde are irritation of the eye mucous membranes, skin, and upper respiratory tract, and a central nervous system (CNS) depressant in humans. Acute exposure can cause conjunctivitis, coughing, difficult breathing, and dermatitis. Chronic exposure may cause heart and kidney damage, embryotoxicity, and teratogenic effects. Acetaldehyde is a probable carcinogen in humans.

We recently reviewed health effects associated with emissions of particulates from diesel engines in the context of regulating heavy duty motor vehicles and engines (66 FR 5001, January 18, 2001). Diesel particulate matter (PM) is not currently listed as a hazardous air pollutant for stationary sources under section 112 of the CAA and was not specifically reviewed under the rule, though constituent parts of diesel PM are subject to the final rule. We are continuing to review this issue in the context of regulating stationary RICE.

D. What Is the Regulatory Development Background of the Source Category?

In September 1996, we chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, also known as the Coordinating Committee, formed Source Work Groups for the various combustor types covered under the ICCR. One work group, the RICE Work Group, was formed to research issues related to stationary RICE. The RICE Work Group submitted recommendations, information, and data analyses to the Coordinating Committee, which in turn considered them and submitted recommendations and information to EPA. The Committee's 2-year charter expired in September 1998. We considered the Committee's recommendations in developing the final rule for stationary RICE.

II. Summary of the Final Rule

A. What Sources Are Subject to the Final Rule?

The final rule applies to you if you own or operate stationary RICE which are located at a major source of HAP emissions, except if your stationary RICE all have a site-rating of 500 brake HP or less. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

Section 112(n)(4) of the CAA requires that the aggregation of HAP for purposes of determining whether an oil and gas production facility is major or nonmajor be done only with respect to particular sites within the source and not on a total aggregated site basis. We referenced the requirements of section 112(n)(4) of the CAA in our NESHAP for Oil and Natural Gas Production Facilities in subpart HH of 40 CFR part 63. As in subpart HH, we plan to aggregate HAP emissions for the purposes of determining a major HAP source for RICE only with respect to particular sites within an oil and gas production facility. The sites are called surface sites and may include a combination of any of the following equipment: glycol dehydrators, tanks which have potential for flash emissions, RICE, and combustion turbines.

The EPA acknowledges that the definition of major source in the final rule may be different from those found in other rules; however, this does not alter the definition of major source in other rules and, therefore, does not affect the Oil and Natural Gas Production Facilities NESHAP (subpart HH of 40 CFR part 63) or any other rule applicability.

While all stationary RICE with a site-rating of more than 500 brake HP located at major sources are subject to the final rule, there are distinct requirements for regulated stationary RICE depending on their design, use, and fuel. The standards in the final rule have specific requirements for all new or reconstructed stationary RICE and for existing spark ignition 4 stroke rich burn (4SRB) stationary RICE located at a major source of HAP emissions, except that stationary RICE with a site-rating of 500 brake HP or less are not addressed in the final rule. New or reconstructed stationary RICE which operate exclusively as emergency or limited use units are subject only to initial notification requirements. New or reconstructed stationary RICE which combust landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis are subject only to initial notification requirements and to monitoring, recording, and reporting of fuel usage requirements. With the exception of existing spark ignition 4SRB stationary RICE, other types of existing stationary RICE (*i.e.*, spark ignition 2 stroke lean burn (2SLB), spark ignition 4 stroke lean burn (4SLB), compression ignition (CI), stationary RICE that combust landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, emergency, and limited use units) located at a major source of HAP emissions are not subject to any specific requirement under the final rule. You must determine your source's subcategory to determine which requirements apply to your source.

The final rule does not apply to stationary RICE located at an area source of HAP emissions. An area source of HAP emissions is a contiguous site under common control that is not a major source.

Finally, the final rule does not apply to stationary RICE test cells/stands since these facilities are covered by another NESHAP, subpart PPPPP of 40 CFR part 63.

B. What Source Categories and Subcategories Are Affected by the Final Rule?

The final rule covers stationary RICE. A stationary RICE is any RICE which uses reciprocating motion to convert heat energy into mechanical work and is not mobile. Stationary RICE differ from mobile RICE in that a stationary RICE is not a non-road engine as defined at 40 CFR 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition.

We divided the stationary RICE source category into five subcategories: (1) Stationary RICE with a site-rating of 500 brake HP or less, (2) emergency stationary RICE, (3) limited use stationary RICE, (4) stationary RICE that combust landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, and (5) other stationary RICE. We further divided the last subcategory into four subcategories: (1) 2SLB stationary RICE, (2) 4SLB stationary RICE, (3) 4SRB stationary RICE, and (4) CI stationary RICE.

The final rule does not apply to stationary RICE test cells/stands since these facilities are covered by another NESHAP, subpart PPPPP of 40 CFR part 63.

The final rule also does not apply to stationary RICE with a site-rating of 500

brake HP or less. In reviewing the population database to identify stationary RICE with a site-rating of 500 brake HP or less, we found extremely little information. In discussions with State and local permitting officials, the manufacturers, and some of the owners and operators of stationary RICE, we found that such small stationary RICE have generally not been regarded as significant sources of air pollutant emissions. As a result, the small stationary RICE have not been subjected to the same level of scrutiny, examination, or review as larger stationary RICE. Little information has been gathered or compiled by anyone for this subcategory of stationary RICE.

Thus, at this point, we know very little about stationary RICE with a site-rating of 500 brake HP or less. For example, we do not know how many of the small stationary RICE exist. In addition, we know little about the operating characteristics and emissions, the current use of, as well as the applicability of, emission control technologies, the costs of emission control for the small stationary RICE, or the economic impacts and benefits associated with regulation. In the absence of such information, we have concerns with the applicability of HAP emission control technology to these stationary RICE. As a result, we feel it is appropriate to defer a decision on regulation of stationary RICE with a site-rating of 500 brake HP or less until further information on the engines can be obtained and analyzed.

We feel this subcategory of stationary RICE is likely to be more similar to stationary RICE located at area sources than to stationary RICE located at major sources. Thus, we plan to include this subcategory of stationary RICE in our considerations to develop regulations for stationary RICE located at area sources.

C. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The primary sources of HAP emissions are exhaust gases from combustion of gaseous fuels and liquid fuels in stationary RICE. Formaldehyde, acrolein, methanol, and acetaldehyde are HAP that are present in significant quantities from stationary RICE.

D. What Are the Emission Limitations and Operating Limitations?

As the owner or operator of an affected source, you must do one of the following: (1) Each existing, new, or reconstructed 4SRB stationary RICE must comply with each emission limitation in Table 1a of subpart ZZZZ, 40 CFR part 63, and each operating limitation in Table 1b of subpart ZZZZ that apply; or (2) each new or reconstructed 2SLB stationary RICE, new or reconstructed 4SLB stationary RICE, or new or reconstructed CI stationary RICE must comply with each emission limitation in Table 2a of subpart ZZZZ and operating limitation in Table 2b of subpart ZZZZ that apply. These tables can be found after the definitions in § 63.6675 of subpart ZZZZ.

Existing 2SLB stationary RICE, existing 4SLB stationary RICE, existing CI stationary RICE, stationary RICE that operate exclusively as emergency or limited use units, or stationary RICE that combust landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis have an emission standard of no emission reduction, and will not be tested to meet any specific emission limitation or operating limitation. In addition, any stationary RICE located at an area source of HAP emissions, any stationary RICE with a site-rating of 500 brake HP or less, or stationary RICE that are being tested at stationary RICE test cells/stands are not addressed in the final rule and, therefore, do not need to comply with any emission limitation or operating limitation.

E. What Are the Initial Compliance Requirements?

If your stationary RICE must meet specific emission limitations and operating limitations, then you must meet the following initial compliance requirements. The testing and initial compliance requirements are different, depending on whether you demonstrate compliance with the carbon monoxide (CO) emission reduction requirement, formaldehyde emission reduction requirement, or the requirement to limit the formaldehyde concentration in the stationary RICE exhaust.

If you own or operate a 2SLB or 4SLB stationary RICE or a CI stationary RICE complying with the requirement to reduce CO emissions, you must conduct an initial performance test to demonstrate that you are achieving the required CO percent reduction, corrected to 15 percent oxygen, dry basis. The initial performance test must be conducted at high load conditions, defined as 100 percent ±10 percent.

If you own or operate a 2SLB or 4SLB stationary RICE or a CI stationary RICE complying with the requirement to reduce CO emissions and you are using an oxidation catalyst, you must also install a continuous parameter monitoring system (CPMS) to continuously monitor the catalyst inlet temperature. During the initial performance test, you must record the initial pressure drop across the catalyst and the catalyst inlet temperature.

If you own or operate a 2SLB or 4SLB stationary RICE or a CI stationary RICE complying with the requirement to reduce CO emissions and you are not using an oxidation catalyst, you must also petition the Administrator for approval of operating limitations or approval or no operating limitations. You must also install a CPMS to continuously monitor the operating parameters (if any) approved by the Administrator. During the initial performance test, you must record the initial values of the approved operating parameters (if any).

As an alternative, you may elect to install a continuous emissions monitoring system (CEMS) to measure CO and either carbon dioxide or oxygen simultaneously at the inlet and outlet of the oxidation catalyst. To demonstrate initial compliance, you must conduct an initial performance evaluation using Performance Specifications (PS) 3 and 4A of 40 CFR part 60, appendix B. The initial performance test must be conducted at high load conditions, defined as 100 percent ±10 percent. You must demonstrate that the reduction of CO emissions meets the required percent reduction using the first 4-hour average after a successful performance evaluation. Your measurements at the inlet and the outlet of the oxidation catalyst must be on a dry basis and corrected to 15 percent oxygen or equivalent carbon dioxide content.

If you own or operate 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions, you must conduct an initial performance test using Test Method 320 or 323 of 40 CFR part 63, appendix A, or ASTM D6348–03 to demonstrate that you are achieving the required formaldehyde percent reduction, corrected to 15 percent oxygen, dry basis. The initial performance test must be conducted at high load conditions, defined as 100 percent ±10 percent.

If you own or operate a 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions and you are using non-selective catalytic reduction (NSCR), you must also install a CPMS to continuously monitor the catalyst inlet temperature. During the initial performance test, you must record the initial values of the pressure drop across the catalyst and the catalyst inlet temperature.

If you own or operate a 4SRB stationary RICE complying with the requirement to reduce formaldehyde

emissions and you are not using NSCR, you must also petition the Administrator for approval of operating limitations or approval or no operating limitations. You must also install a CPMS to continuously monitor the operating parameters (if any) approved by the Administrator. During the initial performance test, you must record the initial values of the approved operating parameters (if any).

If you are complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust, you must conduct an initial performance test using Test Method 320 or 323 of 40 CFR part 63, appendix A, or ASTM D6348–03 to demonstrate that the concentration of formaldehyde in the stationary RICE exhaust is less than or equal to the emission limit, corrected to 15 percent oxygen, dry basis, that applies to you. To correct to 15 percent oxygen, dry basis, you must measure oxygen using Method 3A or 3B of 40 CFR part 60, appendix A, and measure moisture using Method 4 of 40 CFR part 60, appendix A; or Test Method 320 of 40 CFR part 63, appendix A; or ASTM D6348–03. The initial performance test must be conducted at high load conditions, defined as 100 percent ±10 percent.

If you own or operate a 2SLB or 4SLB stationary RICE or a CI stationary RICE complying with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you are using an oxidation catalyst or if you own or operate a 4SRB stationary RICE complying with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you are using NSCR, you must also install a CPMS to continuously monitor the catalyst inlet temperature. During the initial performance test, you must record the initial pressure drop across the catalyst and the catalyst inlet temperature.

If you choose to comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you are not an using oxidation catalyst or NSCR, you must also petition the Administrator for approval of operating limitations or approval of no operating limitations. If the Administrator approves your petition for operating limitations, the operating limitations must also be established during the initial performance test.

If you petition the Administrator for approval of operating limitations, your petition must include the following: (1) Identification of the specific parameters you propose to use as operating limitations; (2) a discussion of the relationship between the parameters and HAP emissions, identifying how HAP emissions change with changes in the parameters, and how limitations on the parameters will serve to limit HAP emissions; (3) a discussion of how you will establish the upper and/or lower values for the parameters which will establish the limits on the parameters in the operating limitations; (4) a discussion identifying the methods you will use to measure and the instruments you will use to monitor the parameters, as well as the relative accuracy and precision of the methods and instruments; and (5) a discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring the parameters.

If you petition the Administrator for approval of no operating limitations, your petition must include the following: (1) Identification of the parameters associated with operation of the stationary RICE and any emission control device which could change intentionally (*e.g.*, operator adjustment, automatic controller adjustment, etc.) or unintentionally (*e.g.*, wear and tear, error, etc.) on a routine basis or over time; (2) a discussion of the relationship, if any, between changes in the parameters and changes in HAP emissions; (3) for those parameters with a relationship to HAP emissions, a discussion of whether establishing limitations on the parameters would serve to limit HAP emissions; (4) for those parameters with a relationship to HAP emissions, a discussion of how you could establish upper and/or lower values for the parameters which would establish limits on these parameters in operating limitations; (5) for the parameters with a relationship to HAP emissions, a discussion identifying the methods you could use to measure the parameters and the instruments you could use to monitor them, as well as the relative accuracy and precision of the methods and instruments; (6) for the parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and (7) a discussion of why, from your point of view, it is infeasible or unreasonable to adopt the parameters as operating limitations.

F. What Are the Continuous Compliance Provisions?

Several general continuous compliance requirements apply to all stationary RICE meeting various specified emission and operating limitations. If your stationary RICE is required to meet specific emission and operating limitations, then you are required to comply with the emission and operating limitations at all times, except during startup, shutdown, and malfunction of your stationary RICE. You must also operate and maintain your stationary RICE, air pollution control equipment, and monitoring equipment according to good air pollution control practices at all times, including startup, shutdown, and malfunction. You must conduct all monitoring at all times that the stationary RICE is operating, except during periods of malfunction of the monitoring equipment or necessary repairs or quality assurance or control activities, such as calibration checks.

For 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions, unless you are using a CEMS, you must conduct semiannual performance tests for CO and oxygen using a portable CO monitor to demonstrate that the required CO percent reduction is achieved. The performance tests must be conducted at high load conditions, defined as 100 percent ±10 percent. If you demonstrate compliance with the percent reduction requirement for two successive performance tests, you may reduce the frequency of performance testing to annually. However, if an annual performance test indicates a deviation from the percent reduction requirement, you must return to semiannual performance tests.

If you are using an oxidation catalyst, you must continuously monitor and record the catalyst inlet temperature to demonstrate continuous compliance with the CO percent reduction requirement. The 4-hour rolling average of the valid data must be within the operating limitation. You must also measure the pressure drop across the catalyst monthly. If you replace your oxidation catalyst, you must measure your pressure drop and catalyst inlet temperature.

If you are not using an oxidation catalyst, you must continuously monitor and record the operating parameters (if any) approved by the Administrator to demonstrate continuous compliance with the CO percent reduction requirement. The 4-hour rolling average of the valid data must be within the operating limitation.

If you elect to demonstrate continuous compliance using a CEMS, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO concentration at the inlet and outlet of the oxidation catalyst and calculate the percent reduction of CO emissions hourly. The reduction of

CO must be at least the required percent reduction, based on a rolling 4-hour average, averaged every hour. You must also conduct an annual relative accuracy test audit (RATA) of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.

For existing, new, or reconstructed 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions using NSCR, you must demonstrate continuous compliance by continuously monitoring the catalyst inlet temperature. The 4-hour rolling average of the valid data must be within the operating limitation. You must also measure the pressure drop across the catalyst monthly. If you replace your NSCR, you must measure the values of the pressure drop across the catalyst and measure the catalyst inlet temperature.

For existing, new, or reconstructed 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions and not using NSCR, you must continuously monitor and record the operating parameters (if any) approved by the Administrator. The 4-hour rolling average of the valid data must be within the operating limitation.

The 4SRB stationary RICE with a site-rating greater than or equal to 5,000 brake HP must also conduct semiannual performance tests to demonstrate that the percent reduction for formaldehyde emissions is achieved. The performance tests must be conducted at high load conditions, defined as 100 percent ±10 percent. If you demonstrate compliance with the percent reduction requirement for two successive performance tests, you may reduce the frequency of performance testing to annually. However, if an annual performance test indicates a deviation from the percent reduction requirement, you must return to semiannual performance tests.

If you are complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust, the following requirements must be met.

Proper maintenance. At all times, the owner or operator shall maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

Continued operation. Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation at all times that the unit is operating. Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality assurance or control activities shall not be used for purposes of calculating data averages. The owner or operator shall use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

After completion of the initial performance test, you must demonstrate that formaldehyde emissions remain at or below the formaldehyde concentration limit by performing semiannual performance tests. The performance tests must be conducted at high load conditions, defined as 100 percent ±10 percent. If you demonstrate compliance with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust for two successive performance tests, you may reduce the frequency of performance testing to annually. However, if an annual performance test indicates a deviation of formaldehyde emissions from the formaldehyde concentration limit, you must return to semiannual performance tests.

If you choose to comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you are using an oxidation catalyst or NSCR, you must demonstrate continuous compliance by continuously monitoring the catalyst inlet temperature. The 4-hour rolling average of the valid data must be within the operating limitation. You must also measure the pressure drop across the catalyst monthly. If you replace your oxidation catalyst or NSCR, you must measure the values of the pressure drop across the catalyst and measure the catalyst inlet temperature.

If you choose to comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you are not using an oxidation catalyst or NSCR, you must demonstrate continuous compliance by continuously monitoring and recording the values of any parameters which have been approved by the Administrator as operating limitations.

G. What Are the Notification, Recordkeeping and Reporting Requirements?

If you own or operate a stationary RICE with a site-rating of more than 500 brake HP which is located at a major source of HAP emissions, you must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance test or evaluation, and a notification of compliance for each stationary RICE which must comply with the specified emission and operating limitations. In addition, you must submit an initial notification for each existing 4SRB stationary RICE and each new stationary RICE which operates exclusively as an emergency unit, limited use unit, or a stationary RICE which combusts digester gas or landfill gas equivalent to 10 percent or more of the gross heat input on an annual basis.

You must record all of the data necessary to determine if you are in compliance with the emission limitations and operating limitations (if applicable) as required by the final rule. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. Records must remain on-site for at least 2 years and then can be maintained off-site for the remaining 3 years.

You must submit a compliance report semiannually. This report should contain information including company name and address, a statement by a responsible official that the report is accurate, and a statement of compliance or documentation of any deviation from the requirements of the final rule during the reporting period.

III. Summary of Significant Changes Since Proposal

Most of the rationale used to develop the proposed rule remains the same for the final rule. Therefore, the rationale previously provided in the proposed rule is not repeated in the final rule and the Rationale for Selecting the Proposed Standards section of the proposed rule should be referred to. Changes that have been made to the final rule are discussed in this section with rationale following in the Summary of Responses to Major Comments section.

A. Emission Limitations

In the proposed NESHAP, new 2SLB stationary RICE were required to either reduce CO emissions by 60 percent or

more, or limit the concentration of formaldehyde to 17 parts per million by volume dry basis (ppmvd) or less at 15 percent oxygen. Existing and new 4SRB stationary RICE were required to either reduce formaldehyde emissions by 75 percent or more, or limit the concentration of formaldehyde to 350 parts per billion by volume dry basis (ppbvd) or less at 15 percent oxygen. The final rule requires new 2SLB stationary RICE to either reduce CO emissions by 58 percent or more, or limit the concentration of formaldehyde to 12 ppmvd or less at 15 percent oxygen. Existing and new 4SRB stationary RICE must either reduce formaldehyde emissions by 76 percent or more, or limit the concentration of formaldehyde to 350 ppbvd or less at 15 percent oxygen.

In the proposed rule, sources were required to meet one of two emission limitations, depending on the type of control device being used. In the final rule, we have allowed sources the flexibility to meet either emission limitation, regardless of the type of emission control.

B. Operating Limitations

We have made several revisions to the operating limitations that we proposed. The minimum value for the catalyst inlet temperature for new 2SLB, new 4SLB, and new CI stationary RICE complying with the requirement to reduce CO emissions and using an oxidation catalyst has decreased from 500°F to 450°F and the maximum value has increased from 1250°F to 1350°F. For 4SRB stationary RICE, we have removed the requirement to maintain the temperature rise across the catalyst. For stationary RICE complying with the requirement to limit the concentration of formaldehyde, we have removed the proposed requirement to maintain either an operating load or fuel flow rate equal to or greater than 95 percent of the value established during the initial performance test.

C. Testing and Monitoring

In the final rule, we did not include EPA SW–846 Method 0011 or California Air Resources Board (CARB) Method 430 as appropriate methods for measuring formaldehyde. We also specified that performance testing should be conducted at high load, defined as 100 ±10 percent. In the final rule, we have included ASTM D6348–03 as an acceptable method for formaldehyde and moisture.

The proposed rule required new 2SLB, new 4SLB, and new CI stationary RICE with a brake HP greater than or equal to 5,000 complying with the CO emission reduction requirement to install a CEMS to continuously monitor CO, whereas those with a brake HP less than 5,000 demonstrated compliance with continuous parametric monitoring and quarterly CO performance testing. The final rule requires that new 2SLB, new 4SLB, and new CI engines use continuous parametric monitoring and semiannual CO performance testing to demonstrate continuous compliance. Sources may still elect to use a CO CEMS, but it is not required.

In the final rule, we specified that the pressure drop across the catalyst must be measured monthly for sources complying with the requirement to reduce CO emissions and using an oxidation catalyst and for sources complying with the requirement to reduce formaldehyde emissions and using NSCR, instead of continuously monitored as specified in the proposed rule.

D. Other

The proposed rule specified that stationary RICE that combust landfill gas or digester gas as primary fuel did not have to meet the requirements of the rule, except for initial notification requirements. In the final rule, we redefined the subcategory as those engines with annual landfill gas or digester gas consumption of 10 percent or more of the gross heat input on an annual basis. We have specified that new and reconstructed stationary RICE with annual landfill gas or digester gas consumption of 10 percent or more have to submit an initial notification and must also meet monitoring, recording, and reporting requirements associated with fuel usage. Existing stationary RICE with annual landfill gas or digester gas consumption of 10 percent or more do not have to meet any requirements.

The definition of emergency and limited use stationary RICE has been separated in the final rule. Limited use stationary RICE means any stationary RICE that operates less than 100 hours per year.

The definition of emergency stationary RICE was written to indicate that loss of power that constitutes an emergency can include power supplied to portions of a facility, and that emergency operation is not limited to only times when the primary power source has been interrupted and is not limited to a specific number of hours. Routine testing and maintenance to ensure operational readiness has been included in the definition of emergency operation.

We included a provision in the final rule allowing new or rebuilt engines to operate for up to 200 hours prior to installing the catalyst; this will not be considered a violation.

In the final rule, we specified that an existing area source that increases its emissions or its potential to emit such that it becomes a major source must be in compliance within 3 years after becoming a major source. Potential to emit is defined in § 63.6675 of the final stationary RICE NESHAP. The proposed rule stipulated that an existing area source that became a major source must be in compliance immediately after becoming a major source.

IV. Summary of Responses to Major Comments

A more detailed summary of comments and our responses can be found in the Summary of Public Comments and Responses document, which is available from several sources (see **ADDRESSES** section).

A. Applicability

Comment: One commenter requested clarification on what is considered an existing RICE unit for purposes of compliance. According to the commenter, using a date as a determination whether an engine is existing is confusing. The commenter stated that an engine takes on its identity when first assembled into an engine or when modified to be a different kind of engine, regardless of where that engine is ultimately installed or whether it is a spare on the shelf awaiting installation. Another commenter asked that EPA clarify that an existing RICE unit is any engine that was assembled as a final unit before December 19, 2002, regardless of whether it was or has been installed in a stationary location.

One commenter stated that the criteria that makes a RICE unit affected by the proposed rule does not limit the rule's effects to only units that operate. The proposed factors that determine applicability are construction date, site-rating, and specific inherent designs of units. None of these criteria as applied in the proposal include a requirement that the engine be operational. It is not uncommon for an owner or operator to have idle engines. Some may be installed and not in use. Others may be stored for later use as replacements or spare engines. Importantly, idle units are distinct from emergency units because an idle unit is not in any use. The commenter expressed that an idle RICE unit should have no compliance obligations imposed by the final RICE rule.

Response: We disagree with the first set of comments and feel that the date an engine was constructed is the date it

was installed at the operator site and not when it was assembled as a final unit at the manufacturer. Thus, any engine constructed (*i.e.*, installed at the site of the operator) prior to December 19, 2002, is an existing engine for purposes of the final rule, while any engine constructed on or after that date is a new engine. For purposes of the final rule, the term ''on-site fabrication'' in the definition of construction in 40 CFR § 63.2 shall refer to the final installation at the site of the final operator. This definition of construction is in line with how EPA generally defines construction, *i.e.*, it is defined by when the unit is installed at the operator's location, rather than where it is first assembled.

We feel it is appropriate to define ''on-site fabrication'' as the final site of installation because even after a unit has been manufactured, several components necessary in order to be able to operate the unit must be considered and added. The owner or operator cannot go directly from purchasing the unit from the manufacturer to operation. The owner or operator must typically have a building to house the unit in, construct a pad for the unit, run utilities, install fuel supply tanks or run the natural gas line, have the catalyst vendor install the pollution control equipment, and finally test the unit on-site. For larger engines (e.g., 5,000 HP or greater), the installation process is even more pronounced. For these reasons, we find it appropriate that the date that final installation of the unit at the site of operation is commenced should be considered the construction date.

Engines manufactured prior to December 19, 2002, but where installation was not commenced until after that date, are considered new engines and must comply with the requirements for new engines. We expect that these units will be able to comply with the requirements especially since the control equipment is typically installed on the engine at the site of operation and does not come with the engine purchased from the manufacturer. Finally, no problems are expected to occur with retrofit controls because the control technology is relatively easy to retrofit, especially in units that are being installed initially at a site. If owners or operators anticipate problems, they can elect to purchase a new engine meeting the requirements if it is installed after that date.

With regard to the next comment, we disagree with the commenter's proposition that EPA needs to have a special provision to deal with engines that are installed but not in use. For new engines covered by the final rule, which will be the vast majority of the engines, the final rule does not apply until startup of the engine, which is when the engine begins operation. Therefore, new engines are not covered until they are operational, which already accomplishes the goal of the commenter. For existing engines, we feel that any engine that does not meet the definition of limited use engine, which includes any engine that operates less than 100 hours per year, should not be relieved of compliance obligations. We have written our definitions to distinguish emergency engines from limited use engines, which should reduce some confusion. An engine that does not operate at all is clearly a limited use engine, which by definition includes engines that operate 0 hours per year.

Comment: Several commenters expressed that EPA should include an alternative applicability criteria based on 1 tpy actual formaldehyde emissions.

Response: The basis for this comment is the Oil and Natural Gas Production and Natural Gas Transmission and Storage NESHAP (promulgated on June 17, 1999). In that rule, HAP emissions from process vents at glycol dehydration units that are located at major HAP sources and from process vents at certain area source glycol dehydration units are required to be controlled unless the actual flowrate of natural gas in the unit is less than 85,000 cubic meters per day (3.0 million standard cubic feet per day), on an annual average basis, or the benzene emissions from the unit are less than 0.9 megagrams per year (1 tpy). The 1 tpy emission threshold in the Oil and Natural Gas Production and Natural Gas Transmission and Storage MACT is equivalent to the smallest size glycol dehydration unit with control of HAP emissions and is, therefore, based on equivalence, not risk. The information in the docket does not support a decision to provide an alternative applicability cutoff in this case. Our decision to defer regulation of engines 500 HP or less was based on questions regarding how accurately the database reflected such engines. There were no such concerns raised based on whether an engine emitted formaldehyde above 1 tpy.

Comment: Five commenters stated that the applicability limit for 2SLB should be increased to 1100 HP to be consistent with the MACT floor. One commenter stated that the small engine size cutoff should be changed from 500 HP to 650 HP. The commenter said that while EPA appropriately reasoned that small engines should not be subject to the requirements of the rule, EPA provided no explicit rationale for the selection of 500 HP as the appropriate small engine size cutoff. Ranking all engines in EPA's database from smallest to largest, the first engine size that has controls is 650 HP. Thus, the appropriate small engine size cutoff supported by the record is less than 650 HP instead of less than or equal to 500 HP.

Response: First, we need to clarify that engines 500 brake HP or less have not been exempted from regulation. Because we determined at the time of proposal that we did not have enough information to go forward with regulation of those engines at this time, we have deferred regulatory activity with regard to those engines. Pursuant to a consent decree signed on May 22, 2003, *Sierra Club* v. *Whitman,* Case Number 1:01CV01537 (D.C.D.C.), a notice of proposed rulemaking regarding regulation of these engines under CAA section 112 is scheduled for October 31, 2006, with a final rule by December 20, 2007. At this time, it would be inappropriate to speculate on what level of control would be promulgated for these engines.

We are aware of stationary engines as small as 650 HP that are equipped with add-on HAP control devices. We feel our database represented the population of engines between 500 HP and 1100 HP reasonably well, so we do not feel it is appropriate to defer regulation of these engines to a later rule. Therefore, we do not feel it is appropriate to defer the regulation of engines up to 1100 HP for 2SLB engines, or to include such engines in a separate subcategory. Although 650 HP is the smallest size unit that is known to have add-on HAP control, we feel it is appropriate to limit the deferral to engines 500 HP or less because the control technology used for 650 HP units can be transferred to units at least as small as 500 HP in size. Oxidation catalyst technology is not limited to engines greater than 650 HP in size. In fact, information received during the public comment period supports our conclusion, where several engines rated at 400 HP were equipped with oxidation catalyst control. Our deferral of engine regulation was based on the type of engines used below 500 HP and whether our database was adequate for such engines. We feel our database for engines above 500 HP was adequate and that, in any case, the final rule for these engines is adequately justified in the record. The commenter does not adequately provide particular reasons to justify placing engines between 500 and 650 HP in a different subcategory from larger engines, and we

do not feel such subcategorization has been shown to be appropriate.

Comment: One commenter asserted that the rule should be more explicit as to whether the 500 HP capacity level for exception from the rule and 5,000 HP capacity level for enhanced monitoring applies to an individual engine or applies to the aggregate capacity of a group of engines.

Response: We intended for the 500 HP capacity level to apply to an individual engine, not the aggregate capacity of a group of engines. Similarly, the 5,000 HP capacity level for enhanced monitoring was intended to apply to an individual engine. However, we have not included a CO CEMS requirement in the final rule. Sources are free to use CO CEMS to demonstrate compliance; however, CO CEMS are not required.

Comment: One commenter contended that the MACT should consider exempting any RICE using landfill gas. A diesel engine can operate at a landfill in a dual fuel mode using fuel oil and landfill gas. Tests have shown that a catalytic converter cannot be used because of siloxanes in the landfill gas, even if the engine operates with more than half the energy being supplied by the liquid fuel.

Response: In the proposed rule, we established a subcategory for landfill or digester gas fired units and defined the subcategory as those stationary RICE that combust digester gas or landfill gas as the primary fuel. In the proposed rule, these units did not have to meet any emission limitation requirements but were subject to the initial notification requirements. We agree with the commenters supporting the proposed approach to landfill and digester gas fired engines. We agree that neither control technology, fuel switching, or other practices would be an appropriate or workable strategy for reducing HAP from these engines. We agree with the commenter that problems will occur when using landfill gas because of siloxanes in the fuel, even if the engine operates with more than half the energy being supplied by the liquid fuel. Therefore, we contacted sanitation districts and catalyst vendors for information. Based on the information obtained, we feel that firing greater than 10 percent landfill gas or digester gas will cause fouling of the oxidation catalyst, rendering the control device inoperable within a short period of time. All the sources we contacted indicated that there would be problems associated with catalyst deactivation due to siloxanes present in landfill gas and digester gas. Information regarding landfill and digester gas is presented in a memorandum included in the rule docket (Docket ID Nos. OAR–2002–0059 and A–95–35). While most units will operate using landfill or digester gas consumption above 50 percent of the time, there are times when such units may need to operate significantly below 50 percent landfill or digester gas consumption. We feel a cut-off level of 10 percent of gross heat input is an appropriate level for defining these units, because operation below that percentage raises significant questions regarding whether the unit is still appropriately considered to be operating as a landfill or digester gas burning unit, and would raise concerns regarding circumvention of the requirements for other new units. In the final rule, we have redefined the subcategory as those engines with annual landfill gas or digester gas consumption of 10 percent or more of the gross heat input on an annual basis. New and reconstructed engines in this subcategory must only comply with limited requirements of the final rule. Engines with an annual landfill gas or digester gas consumption of less than 10 percent of the gross heat input on an annual basis are subject to applicable emission limitations of the final rule in addition to other requirements.

Comment: Multiple commenters stated that a limited use category with a capacity utilization of 10 percent or less (876 or fewer hours of annual operation) should be included. One commenter suggested using a flat annual threshold level of 1,000 hours per year in lieu of 10 percent usage. Another commenter recommended that the category include all units, not only peak shaving units. Several commenters argued that the 50 hours per year may not be sufficient. Some commenters noted that testing and maintenance should be included and not counted towards the 50 hours per year. Two commenters recommended at least 250 hours per year. One commenter recommended a 52 hour limit for routine maintenance and testing, then have no limit for true emergency use. Similarly, other commenters expressed that since routine or unscheduled maintenance and testing could require unknown time to complete, there should be no time limits on the use of emergency stationary RICE. Several commenters suggested 100 hours per year for emergency generators. One commenter stated that the subcategory should be redefined to include RICE that operate less than 500 hours per year. Two commenters remarked that setting this exemption at 50 hours per year down from the 100 or 200 hours per year commonly seen in many State air pollution regulations, could have the net effect of increasing pollution by not allowing sufficient operating time for the engine to burn off hard deposits. Several commenters stated that the limited use definition for RICE should be separated from the emergency power definition since these are really different applications. Two commenters stated that the operation of emergency power units should not be limited to only those times when the primary power source has been interrupted, but rather not time-restricted at all, providing the primary design purpose of the unit is to provide emergency backup services, fire water, etc. One commenter asked that EPA clarify the definition of emergency/limited use engines as to whether loss power that constitutes an emergency is limited to power supplied to the facility as a whole or includes power supplied to portions of the facility. One commenter suggested that EPA revise the definition of emergency power RICE to clarify the intent of the rule as the current definition does not adequately encompass the wide array of emergency uses of engines. One commenter felt that the description of an emergency engine is too restrictive. The emergency use description should describe more power loss emergencies than those affecting an entire facility at once. The definition should also include uses for additional emergency types beyond power loss emergencies, *e.g.*, fuel and raw material curtailments or fuel shortage emergencies applied by governments, utilities, or other suppliers may require the need to temporarily operate an engine, or some equipment may be operated to fight fires (firewater pumps). Neither of these examples represent loss of power, but are still unplanned events.

One commenter stated that the definition should be clarified, or extended, to allow for operations in anticipation of an emergency situation. One commenter remarked that this class of RICE (engines having a capacity utilization of less than 10 percent) would operate mostly in the summer months when the public is more likely to be impacted by the emissions. Acetaldehyde, acrolein, and formaldehyde all have documented short-term acute health effects. The EPA has failed to identify short-term health effects throughout any of the risk analysis proposals. The commenter asserted that any subcategorization of these engines without controls is not protective of public health.

One commenter suggested eliminating from the definition the reference to ''when the primary power source has been rendered inoperable.'' There are emergency conditions where the

primary power source is still operable, but the emergency condition necessitates the startup of engines (*e.g.*, firewater pumps during a unit fire, instrument air back-up engines). Another option would be to add the words ''or is insufficient for an emergency situation'' after the primary power source comment.

Response: The preamble to the proposed rule proposed a subcategory for limited use stationary RICE and defined them as operating 50 hours or less per year. Comments received indicated that the proposed 50 hours per year for limited use units was not sufficient and that many limited use engines would exceed the 50 hours per year just by routine testing and maintenance of the engine for readiness purposes. For this reason, we feel that few owners and operators would find this allowance useful and would not serve a purpose except to cover periods of testing and maintenance. We have, therefore, found it appropriate to increase the number of hours for limited use operation. We have specified in the final rule that limited use stationary RICE are stationary RICE that operate less than 100 hours per year. For limited use units, operation during routine testing and maintenance is counted towards the 100 hours per year.

In the preamble to the proposed rule, we solicited comments on creating a subcategory of limited use engines with capacity utilization of 10 percent or less (876 or fewer hours of annual operation). These units would have included engines used for electric power peak shaving. As a result of soliciting comments, we received several comments regarding the possibility of establishing a limited use subcategory with capacity utilization of 10 percent or less; some for and some against. We considered all comments received and have decided not to include a subcategory of limited use stationary RICE with a capacity utilization of 10 percent or less in the final rule. Limited use units operating 876 hours per year are similar to other sources equipped with add-on oxidation catalyst control and their operation only during peak periods does not preclude them from being equipped with add-on oxidation catalyst control. Those commenters supporting a longer time period for the limited use engines did not provide persuasive arguments for such a subcategory. The commenters have not provided significant data indicating that engines operating up to 10 percent of the time (or longer, as some commenters suggested) are unable to take steps similar to other RICE to reduce HAP. On the contrary, as stated previously, such engines are similar to other stationary RICE that can be and have been equipped with add-on oxidation catalyst control, and their operation only during peak periods does not preclude them from being equipped with workable add-on control or from using other methods of emission control to reduce HAP. The 10 percent time limit would allow over a month of usage per year, which we feel is substantial enough both to be of concern environmentally and to take advantage of emission control strategies. Significant operation of these engines is expected and should be accounted for in the final rule.

By contrast, a limited use exemption covering only 100 hours per year of use is justified because usage in these cases in clearly exceptional and these engines would have the technical and usage concerns similar to emergency engines discussed in the proposed rule. These engines are categorically different from other engines in that they are only used in truly exceptional situations. For these reasons, we have not established a limited use subcategory of units operating 876 hours per year in the final rule, but have included a limited use subcategory allowing engines to operate up to 100 hours per year.

We agree with the comment that the emergency and limited use stationary RICE definition should be separated. We have established separate definitions for emergency stationary RICE and limited use stationary RICE in the final rule.

In addition, in the final rule, the definition of emergency engine was written to indicate that loss of power that constitutes an emergency can include power supplied to portions of a facility. We intended that the definition of emergency engine include operation during emergency situations, including times when the primary power source has been interrupted as well as other situations such as pumping water in the case of fire or flood, which was given as an example of emergency operation in the definition in the proposed rule. The definition has been clarified to clearly indicate that emergency operation is not limited to only times when the primary power source has been interrupted. We contacted the commenter for more information about the types of curtailments with which they were concerned. The commenter provided only one example, which was shutdown of offshore wells during a hurricane. We feel that the definition of emergency stationary combustion engine is sufficient to cover this particular scenario and it is not necessary to include more examples of emergency operation. It would be nearly impossible to provide examples of every potential type of emergency situation. The operation of emergency engines is not limited to a specific number of hours. Also, routine testing and maintenance to ensure operational readiness have been included in the definition of emergency engine. However, the routine testing and maintenance must be within limits recommended by the engine manufacturer or other entity such as an insurance company. Emergency stationary RICE may also operate an additional 50 hours per year in non-emergency situations. As stated previously, routine testing and maintenance have been included in the definition of emergency stationary RICE and, therefore, are not counted towards the 50 hours per year. We do not agree that operation in anticipation of an emergency situation should be included in the definition of emergency engine and have not made this change.

Comment: One commenter requested a subcategory for new and reconstructed stationary CI RICE located in the State of Alaska that exempts the engines from the control requirements of this proposed rule. The commenter stated that EPA has overlooked the fact that low sulfur fuels (less than 500 ppm (0.05 weight percent)) are necessary for CO oxidation catalysts to operate properly and that these fuels are not available in several areas of the United States including the State of Alaska. Sulfur can quickly degrade oxidation catalyst performance for controlling CO (or formaldehyde) emissions by poisoning the precious metal substrate of the catalyst. In one study it was found that increasing the diesel sulfur content from 3 ppm to 350 ppm by weight resulted in a three-fold increase in catalyst-out PM emissions. In the same study, the performance of the diesel oxidation catalyst for controlling CO emissions from the higher sulfur fuel degraded by an average of 10 percent after the short-term (250-hour) aging tests. In Alaska meeting the proposed MACT floor (oxidation catalyst) for new CI RICE sources will be problematic because of the non-availability of low sulfur diesel fuels (300 to 500 ppm sulfur content by weight). The permitted diesel fuel sulfur content, by weight, for most permitted stationary CI sources is between 0.1 percent and 0.5 percent (1,000 ppm to 5,000 ppm by weight). The Trans Alaska Pipeline System facilities operated by the commenter have permitted sulfur fuel content limits between 0.24 percent to 0.5 percent. The lowest fuel sulfur diesel that is available in the State of Alaska is an arctic grade fuel that has a sulfur content of

approximately 0.1 percent. Petroleum refineries in the State are not required to produce lower sulfur fuels because Alaska is exempted (see 40 CFR part 69 of 69 FR 34126) from EPA's low sulfur highway diesel fuel standards.

Response: We feel it is unnecessary to establish a subcategory for new and reconstructed CI RICE located in the State of Alaska. Information received from the Alaska Department of Environmental Conservation (DEC) indicated that there is a refinery in Alaska that can produce low sulfur fuel (300 to 500 ppm sulfur content by weight). The refinery can make low sulfur diesel that meets arctic pour point specifications. The information from the Alaska DEC also indicated that low sulfur fuel is generally available where there are roads in Anchorage, but not generally available on other parts of the road system, such as Fairbanks. Some remote villages do have low sulfur fuel. We expect availability to grow further as EPA's final rule implementing new sulfur limits for highway fuel, including fuel in Alaska (68 FR 5002, January 18, 2001), is implemented beginning in 2006. The Alaska DEC said that Alaska has 200 small villages that are remote, and it may be difficult for these small villages to always have low sulfur fuel available. These villages tend to employ RICE to generate electricity and have between two to four stationary RICE in their power plants. These engines range from 6 to 4000 kilowatt (kW), with an average of 300 kW. The Alaska DEC said that these engines are below the threshold for major sources, and that is also confirmed by HAP emission calculations. Since these villages would not be major HAP sites they would not be affected by the final rule. The non-availability of low sulfur fuel at these remote villages would therefore not be an issue since these villages would not be subject to the rule since they are located at non-major HAP sites. Finally, we have received information from catalyst vendors indicating that there are sulfur tolerant catalysts that have been commercialized and are suitable for use with fuels having a sulfur content between 3,000 and 5,000 ppm sulfur by weight. Sources that may not be able to obtain low sulfur fuel could use such catalysts to comply with the requirements of the final rule. For these reasons, we do not feel it is necessary to establish a separate subcategory for stationary RICE located in Alaska.

B. Definitions

Comment: Several commenters stated that EPA should revise the definition of rich burn engine to eliminate engines that have been converted to operate as lean burn engines and to address older engines (*e.g.*, horizontal), where there is no recommended air/fuel ratio. One commenter recommended that EPA adopt the following definition into the final rule: ''Rich burn engine means four-stroke spark ignited engine where the manufacturer's recommended air/fuel ratio divided by the stoichiometric air/fuel ratio at full conditions is ≤1.1. Engines originally manufactured as rich burn engines, but modified prior to August 16, 2004 with passive emission control technology for nitrogen oxides (NO_X) (such as pre-combustion chambers) shall be considered lean burn engines. Horizontal engines shall be considered lean burn engines. Also, older engines where there are no manufacturer's recommendations regarding air/fuel ratio will be considered a rich burn engine if the excess oxygen content of the exhaust at full load conditions is ≤2 percent.''

Response: We agree with the commenter that it is necessary to address engines that have been converted from 4SRB engines to 4SLB engines and to also address older engines such as horizontal engines. We have, therefore, adjusted the definition of rich burn engine and have written the rich burn definition in the final rule as follows: ''Rich burn engine means any four-stroke spark ignited engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1. Engines originally manufactured as rich burn engines, but modified prior to December 19, 2002 with passive emission control technology for NO_X (such as pre-combustion chambers) will be considered lean burn engines. Also, existing engines where there are no manufacturer's recommendations regarding air/fuel ratio will be considered a rich burn engine if the excess oxygen content of the exhaust at full load conditions is less than or equal to 2 percent.'' In addition, to avoid conflict with the definition of lean burn engine, the lean burn engine definition has also been adjusted and reads as follows in the final rule: ''Lean burn engine means any two-stroke or four-stroke spark ignited engine that does not meet the definition of a rich burn engine.''

Comment: One commenter asserted that the definition of a reconstructed source should be modified to exclude any cost incurred with the installation of a control device required by State and local emission standards. The addition of diesel particulate filters (DPF) could exceed the reconstruction cost threshold (50 percent of fixed capital cost to construct a comparable new source).

Response: Based on the information we have available on costs of DPF systems and costs of engines, we feel that the addition of DPF would not exceed the reconstruction threshold of 50 percent of the capital cost of a new engine. Information received from CARB indicates that the total cost of a DPF including equipment and installation is around $38/HP. Engine costs estimated by CARB are $93/HP for a new engine. Comparing the cost of a DPF system to the cost of a new engine shows that the addition of such a filter system would be less than 50 percent. Engine cost information available to us obtained from other sources indicate that engine costs are between $150-$270/HP. Using these engine costs, the addition of a DPF system would be an even lower percentage of the cost of a new engine. Engine costs are presented in a memorandum included in the rule docket (Docket ID Nos. OAR–2002–0059 and A–95–35). We have, therefore, concluded that based on both information received from CARB and information we already have, the addition of a DPF would be less than 50 percent of the cost of a new engine.

In any case, our policy regarding the inclusion of air pollution control equipment in determining reconstruction is that the costs associated with the purchase and installation of air pollution control equipment are included in the fixed capital cost to the extent that the equipment is required as part of the manufacturing or operating process. Therefore, it is our policy not to include the fixed capital cost of air pollution control equipment that is not part of the operating process. Since DPF is not required in order to operate an engine, the cost for purchase and installation of DPF would not be included in determining whether a source is reconstructed. The commenter does not explain why we should deviate from the General Provisions based on compliance with State or local regulations. A source that is spending more than 50 percent of the capital cost needed for a new engine to meet the requirements should be in a position to make appropriate changes in its source at that time to meet the standards promulgated today. Moreover, the source may be able to comply with both requirements at the same time and may be able to meet the requirements using integrated controls (if not the same controls) that would be best implemented at the same time.

Comment: Several commenters requested that EPA write the definitions of affected source, existing stationary

RICE, new stationary RICE, and reconstructed stationary RICE such that they represent the ''collection'' of each type of source at a site, consistent with General Provisions § 63.2.

Response: Although § 63.2 of the General Provisions provides that we will generally adopt a broad definition of affected source, which includes all emission units within each subcategory which are located within the same contiguous area, this section also provides that we may adopt a narrower definition of affected source in instances where we determine that the broader definition would ''create significant administrative, practical, or implementation problems'' and ''the different definition would resolve those problems.'' This is such an instance. There are several subcategories of stationary RICE, and a site could have engines from multiple subcategories, each having different compliance requirements. Use of the broader definition of affected source specified by the General Provisions would require very complex aggregate compliance determinations. We feel such complicated compliance determinations to be impractical, and, therefore, have decided to adopt a definition which establishes each individual RICE as the affected source.

Comment: One commenter recommended that the preamble should clarify that the definition of major source in the RICE MACT does not alter the definition of a major source in subpart HH of 40 CFR part 63 (Oil and Natural Gas Production Facilities) and, therefore, does not affect subpart HH applicability.

Response: We recognize the commenter's concern regarding the definition of major source in the RICE NESHAP and its difference from the definition of major source in 40 CFR subpart HH. We have, therefore, clarified in the preamble to the final rule that the definition of major source in the RICE NESHAP does not alter the definition of major source in subpart HH (or any other subpart) and, therefore, does not affect subpart HH applicability.

Comment: One commenter recommended that the definitions from 40 CFR subpart HH and 40 CFR subpart HHH for glycol dehydration unit, storage vessel with the potential for flash emissions, and production well should be included.

Response: We agree with the commenter that the definitions should be included in the RICE NESHAP. The definitions from 40 CFR subpart HH and 40 CFR subpart HHH for glycol dehydration unit, storage vessel with the potential for flash emissions, and production well have been added to the final rule.

C. Dates

Comment: A few commenters remarked that EPA should provide 1 year for initial notification as in the glycol dehydration MACT.

Response: An initial notification is not a time consuming activity, and we do not feel that 1 year is necessary to submit an initial notification.

Comment: Multiple commenters expressed the view that immediate compliance for new and reconstructed engines is unreasonable. The commenters felt that 1 year compliance time frame is more reasonable.

Response: We feel that immediate compliance is appropriate for new or reconstructed engines and is consistent with the General Provisions of part 63. See also CAA section 112(i)(1). The requirements of CAA section 112 contemplate that sources will be aware of their requirements at the time of proposal and, excluding requirements that are made more stringent between proposal and promulgation, new or reconstructed sources should be prepared to meet such requirements immediately, at the time of the final rule. Sources are required to install the proper equipment and meet the applicable emission limitations on startup; however, we allow sources 180 days to demonstrate compliance. In addition, because two of our emission requirements have been made more stringent since proposal, sources subject to those requirements that commence operation in between proposal and the final rule may show compliance with the proposed requirements for the first 3 years of the program.

Comment: Several commenters stated that for area sources becoming major sources, the requirement to be in compliance at the time of the switch is unreasonable. Two commenters suggested allowing 1 year for the unit to come into compliance. One commenter suggested that all area sources that become major should be allowed 3 years to achieve compliance or change the definition of a new stationary RICE to ''A stationary RICE is new if you commenced construction of the stationary RICE after December 19, 2002, and you meet the applicability criteria for the subpart at the time you commenced construction.'' Five commenters suggested 3 years.

Response: We agree with the commenters that it is appropriate to allow existing area sources that become major sources 3 years to comply with the final rule. This has been specified in the final rule in § 63.6595(b)(2). However, we do not agree with the commenters that immediate compliance is unreasonable for new and reconstructed RICE located at area sources that are constructed or reconstructed at the same time the area source becomes a major source. These sources are aware in advance of their change in status from area source to major source, and therefore, should have sufficient time to plan for immediate compliance with the final rule. This has been specified in the final rule in § 63.6595(b)(1). A period of 180 days is allowed to demonstrate compliance.

Comment: Some commenters requested that EPA provide 1 year to conduct the initial performance test, rather than 180 days provided by the General Provisions. One commenter indicated that seasonal operations, such as storage facilities or compressor stations used in peak demand only, may not be operational during the 180 days provided to conduct the performance test. All existing 4SRB engines must conduct formaldehyde testing as a part of the initial performance test. It may be difficult to secure appropriate testing firms within the 180 days provided, especially since many may depend on Fourier Transform Infrared (FTIR) testing.

Response: We feel the time we have allowed sources to conduct the initial performance test is appropriate. Existing sources that must meet the requirements of the final rule have 3 years and 180 days to conduct the initial performance test and to demonstrate compliance. Therefore, existing 4SRB engines that must meet the formaldehyde emission limitations have sufficient of time to secure an appropriate testing firm. In addition, the final rule does not only specify that FTIR can be used for formaldehyde testing, but that also Method 323 can be used. This means it may not be necessary to secure testing firms specializing in FTIR measurements, and should increase the number of available testing firms. New sources that must meet the requirements of the final rule are aware in advance that their source will be covered by the final rule. We feel that 180 days is sufficient time to secure appropriate testing firms and to conduct the initial performance test and feel that 1 year to conduct the initial performance test is not necessary. Regarding the comment concerning seasonal operations, new sources do not have to test until the unit is operating, so seasonal operation should not be a concern for new units. Also, for existing sources, we feel that seasonal operation should not be a problem since the unit has 3 years and

180 days to conduct the initial performance test, and surely the unit would be operational within that timeframe. Finally, the 180 day time period for new sources is consistent with the General Provisions of part 63.

D. Emission Limitations

Comment: One commenter asserted that the emission limitations are too stringent. The commenter stated that the proposed emission standards were based on information from only five engines and does not believe that the proposed percent reductions and emission standards reflect the actual performance possible from the wide array of engine designs and sizes in the marketplace. For example, the formaldehyde reduction standard for rich burn engines in the proposed rule is set at 75 percent. However, the data in the docket show that results from eight test runs on two rich burn engines varied from 73 to 80 percent. If the reduction efficiency on two test engines under highly-controlled conditions can vary by such a significant amount (and to a level that does not meet the proposed standard), then it is highly likely that rich burn engines of different size and using different NSCR technology also would not be able to meet the standard. The EPA must consider the significant variability in RICE and adjust all final emissions standards and reduction percentages accordingly. The commenter recommended that the formaldehyde emission limits be revised upward by 10 percent to allow for variability in the RICE and aftertreatment system populations.

Three commenters asserted that the MACT floor for existing 4SRB is not representative of the average emission limit achieved by the best performing 12 percent of existing sources.

One commenter stated that the emission standard for existing 4SRB engines should be reassessed to be consistent with the requirements of CAA section 112(d). The commenter remarked that the Agency used the incorrect approach to set the emission limit for existing 4SRB engines, which logically should be lower percent removal than for new 4SRB engines. It was the commenter's opinion that the Agency should revisit the analysis and establish an emission limit for 4SRB engines more consistent with the required floor-setting methodology.

Five commenters expressed that the same emission limitation for existing and new 4SRB is unrealistic. One commenter recommended considering 10 percent less restrictive emission reduction requirement for existing units. Another commenter indicated that practically speaking, retrofitting existing equipment rarely achieves the optimum design available in new equipment.

One commenter contended that 350 ppbvd is too low. The chosen limit was achieved by the best performing engine during Colorado State University (CSU) testing while for other types of engines the highest emissions from the performance range had been chosen as the emissions limit.

Response: We disagree with comments that the MACT floor level proposed for existing 4SRB engines is inconsistent with the statute or not representative of the average emission level achieved by the best performing 12 percent of existing sources. The commenters do not dispute the accuracy of the data used or the representativeness of the engines tested. The commenters instead believe the manner in which we used the data is not reflective of the average of the best performing 12 percent of existing sources. To clarify our approach in the proposal, we found the lowest percent reduction value for each of the two sources tested, which accounts for variability in results for each source. However, as we found that 27 percent of the engines in the subcategory use NSCR, we felt that it was appropriate to use only the higher of the two values to determine the MACT floor for existing engines. In essence, this treated the top performer as a surrogate for the top half of the population using NSCR or the top 13.5 percent of the population. This is more closely analogous to the level of the top 12 percent of sources than is a straight average of the two sources.

However, in reviewing our method in response to these comments, we feel that it would be more appropriate to include in the analysis the data from the lower performing of the two engines tested, thus using more than a single data point in determining the MACT floor for existing engines. Because the test calculation for the MACT floor for existing engines is supposed to be based on the average of the top performing 12 percent of sources, it would be better to rely on a formula that does not rely solely on the highest performer. Also, it would not be appropriate to use a straight average between the two sources, because that would not be a fair approximation of the average of the top 12 percent of sources. Instead, it would approximate the average of the best performing 27 percent of sources. Therefore, we feel a reasonable approach is to discount the lower performing source by 12/27, thus reducing the influence of that data point by the ratio of controlled sources (27 percent of the population) compared to the statutory level (12 percent). This leads to a weighted average where the data point for the lower performer will be worth 22 percent (50 percent) (12/27) and the level for the higher performer will be worth 78 percent.

To be consistent with the approach followed for other engine types, *i.e.*, establish emission limitations based on test results conducted at high loads, we found it appropriate to exclude runs conducted at low loads in determining the lower and higher performer. This leads to a final MACT floor of 76 percent control efficiency or 350 ppbvd.[1] Though the formaldehyde reduction number differs slightly from the proposed level, it is very close. The proposed level for the alternative formaldehyde concentration emission limitation remains the same even after following the revised approach. This should not be particularly surprising. Though the emission values of the two engines were not identical, they were very close and the final values for either engines generally round to the same value.

For new 4SRB engines, we proposed a formaldehyde reduction requirement of 75 percent and an alternative formaldehyde concentration emission limitation of 350 ppbvd. In reviewing the 4SRB emissions data we used to set the standard, we observed that the minimum percent efficiency achieved by the best performing engine was actually 76.2 percent formaldehyde reduction. Therefore, we acknowledge that the proposed formaldehyde reduction should have been set at 76 percent reduction for new 4SRB engines and not 75 percent formaldehyde reduction and have written this in the final rule.

The commenters also seem to argue that the MACT floor levels for existing engines must be less stringent than those for new engines. While the criteria for the MACT floor for new engines is in some cases more stringent than for existing engines, it is not impossible, or even illogical, for the result to be the same, or at least very close. In this case, the best performing 12 percent of engines use the same control technology, and the emission values, as well as the emission reduction values, appear to be very close for these

[1] The calculation of percentage reduction is as follows: (lowest tested percentage reduction of the lower performing engine) * (.222) + (lowest tested percentage reduction of the higher performing engine) * (.777) = (75.5) (.222) + (76.2) (.778) = 76.0. The calculation of parts per billion is as follows: (highest tested parts per billion of the lower performing engine) * (.222) + (highest tested parts per billion of the higher performing engine) * (.778) = (355) (.222) + (348) (.778) = 350.

engines. Therefore, it is not surprising that the levels for the MACT floor for new and existing engines should be close. Moreover, we were using a very small data set in setting the final emission limits, thus limiting the variation in the data used. This led to a proposed level that used the same calculations for determining the MACT floor for both existing and new engines. We have changed the manner of calculating the MACT floor for existing engines for the final rule, but the result is still very close to that for new engines. Again, this is because the results for both engines were very close.

Regarding the comment referring to the use of the average of the best five performing sources, this is only permitted when the category or subcategory has less than 30 sources. This is not the case with this subcategory. Given that we had usable data from only two sources, it is not clear that averaging the two sources would be appropriate to meet that requirement.

Regarding the comment that retrofitting existing equipment rarely achieved the optimum design available in new equipment, the commenters provide no data showing that emissions reductions from retrofitting existing engines would be reduced compared to those from new engines.

Regardless, the MACT floor for new engines is not based on the optimum possible design for a new engine, but on the best level of control achieved in practice by the best controlled similar source, whether retrofitted or not. Similarly, the MACT floor for existing engines is based on a specific formula. We based the MACT floor for new engines on the information available to us from existing engines. While individual existing sources may have some design constraints in installing the emission control technology, there is no evidence that the MACT floor is not achievable. The suggestion that is provided, a 10 percent discount for existing units, without a basis in the existing data, does not appear consistent with the requirements of CAA section 112(d).

Comment: One commenter indicated that there is considerable doubt about the ability of an oxidation catalyst to reduce the formaldehyde concentration over long periods of time. A technical paper presented at the 2002 Gas Machinery Conference found that the catalyst efficiency for the Waukesha GL engine for formaldehyde reduces from 100 percent to 67 percent in only 150 hours of operation.

Response: We accounted for catalyst aging in setting the standard. In fact, the oxidation catalysts used during EPA's testing at CSU were sufficiently aged prior to testing. The 2SLB engine catalyst was aged for 236 hours, the 4SLB engine catalyst was aged for 140 hours, and the CI engine catalyst was aged for 100 hours. Industry representatives were in agreement that the catalysts were adequately aged. The industry testing we used in setting the standard for 4SRB engines was based on testing of two 4SRB engines equipped with NSCR. The NSCR catalysts used were appropriately aged by more than 2 years prior to testing. Information regarding catalyst aging at CSU is presented in a memorandum included in the rule docket (OAR–2002–0059 and A–95–35).

Comment: One commenter said that the 14 ppmvd formaldehyde limit for new 4SLB engines is not achievable and should be increased. The commenter stated that EPA based its proposed limit on a small number of tests on a newly rebuilt engine over a test period of 8.8 hours. Only a single 4SLB was tested, and it may not be representative of engines of the same type from different manufacturers. The period of catalyst aging was very short compared to typical catalyst maintenance intervals, so results may not be representative of catalyst performance during normal catalyst maintenance intervals; and the tests were performed within only a single catalyst that may not be representative of catalysts from different manufacturers. Clearly, all 4SLB stationary RICE cannot meet the emissions limits set by EPA in the proposed rule, particularly over normal catalyst life intervals of 2 to 3 years. The EPA should incorporate other available test data in the final emission limits for 4SLB engines to accommodate the degradation in catalyst performance over the useful lifetime of the catalyst.

Response: The MACT floor for new sources cannot be less stringent that the emission control that is achieved in practice by the best controlled similar source. The alternative formaldehyde standard for 4SLB engines is based on the minimum level of control achieved by the best controlled source. This approach takes into account variability of the best performing engine. Furthermore, EPA and industry representatives were in agreement that the engines and catalysts tested at CSU were representative of engine and catalyst operation across the U.S. We discussed catalyst aging during the EPA testing at CSU in response to the previous comment. We feel the catalyst was sufficiently aged prior to testing at CSU. Industry representatives also agreed that the catalyst was adequately aged. For the reasons provided, we feel that the 14 ppmvd formaldehyde limit that was proposed for 4SLB is appropriate and achievable. We recognize that the alternative formaldehyde emission limitation is based on a limited amount of data. However, we feel that sources with a well designed oxidation catalyst that operate the equipment properly will be able to meet the formaldehyde concentration.

Comment: Several commenters expressed that 93 percent CO reduction is not achievable. During the public hearing a commenter stated that a specific CO limit is more reasonable. Two commenters suggested reducing the limit to require 60 percent CO reduction. One commenter recommended that the value be set between 70 and 80 percent comparable to 2SLB and CI engines. Another commenter stated that EPA has not demonstrated that the catalyst will perform at this level on a continuous basis considering fuel and lubrication poisoning. Finally, one commenter said that American Petroleum Institute/Gas Research Institute testing indicated a 53 to 63 percent performance. The commenter also said that the percent reduction likely will not be achievable with aged catalysts.

One commenter had several concerns with establishing the CO reduction limit based on the testing conducted at CSU. The concerns stated by the commenter include: Only a single engine for each type was tested and it may not be representative of engines of the same type from different manufacturers; the variables consisted only of parameters affecting HAP formation in the engine and not necessarily those affecting CO reduction across the catalyst; the engines were rebuilt prior to testing to represent new engines and may not represent engine condition between routine maintenance intervals; the period of catalyst aging was very short compared to typical catalyst maintenance intervals, hence results may not be representative of catalyst performance during normal catalyst maintenance intervals; and the tests were performed with only a single catalyst that may not be representative of catalysts from different manufacturers.

One commenter stated catalyst performance degrades over time due to gas species and concentrations, thermal cycling, chemical poisoning and/or physical blocking caused by sulfur, lubricants, silica, etc. that enter the exhaust from the fuel, crankcase and/or combustion air. Catalyst life is the dominant factor in the cost of the

control technology, since the cost of replacement catalyst modules is large relative to other operating and maintenance costs. Typically, oxidation catalysts undergo two stages of deactivation: A period of rapid deactivation as the catalyst adjusts to the thermal and gas conditions, typically over a period on the order of 100 hours; followed by a period of slow deactivation that occurs over thousands or tens of thousands of hours. The duration of the CSU tests was clearly insufficient to address long-term catalyst deactivation, and perhaps not even fully accounting for initial deactivation. For example, CO reduction efficiency during the 140 hours of catalyst aging during the 4SLB engine test at CSU was still declining at the end of that period, suggesting that further deactivation would likely occur over time.

Response: We disagree with the commenter that 93 percent reduction for CO is not achievable for 4SLB engines. The 93 percent CO reduction emission limitation is based on the minimum level of control achieved by the 4SLB engine tested at CSU. We chose the minimum efficiency achieved as this value takes into account variability in performance of the engine and engines operating across the U.S., therefore, we feel we have appropriately set the emission limitation for 4SLB engines.

As rationale for setting the limit at 60 percent, the commenter cited a recent field test of a 4SLB engine where the measured CO reduction efficiency was 53 to 60 percent. However, the commenter did not provide any indication of what reduction efficiency the catalyst was designed for, or whether the catalyst had been properly maintained and cleaned. The commenter also did not identify the operating conditions under which the test was conducted, for example if the test was conducted during high load operation. Moreover, given the results of the CSU testing, and the standard-setting requirements for new engines under CAA section 112(d), it is not clear that the results in that test would be relevant for standard-setting for new engines.

Regarding the concerns expressed by one commenter, EPA and industry representatives were in agreement that the engines and catalysts tested at CSU were representative of engine and catalyst operation across the U.S. As explained in the preamble to the proposed rule, the testing conducted at CSU to obtain HAP and CO emissions data was a joint EPA-industry effort. Prior to testing, EPA and industry developed a list of engine operating parameters that were known to vary throughout the U.S. for each type of engine. The engines and control devices were tested at typical engine conditions in which these operating parameters were varied. The variations in the emission reduction results for each engine type are due to the variability of the engine and control system and include a representation of the performance of the best controlled source for new engines. Equipment manufacturers, catalyst vendors, owners and operators, and EPA agreed that the tests conducted at CSU were representative of typical engine operating conditions in the field for varied engine and catalyst manufacturers. It is believed that the variations in the operating parameters affect both HAP formation and CO reduction across the catalyst. For additional information regarding the CSU testing, please refer to the rule docket (Docket ID Nos. OAR–2002–0059 and A–95–35).

We disagree that the catalyst will not perform at this level on a continuous basis or when it is aged. The CSU testing was funded by several different agencies, and several stakeholders participated in the planning, preparation and execution of the tests. All stakeholders agreed that the catalyst was properly aged before testing was initiated on each engine. We discussed catalyst aging during the testing at CSU in response to a previous comment. We feel the catalyst was sufficiently aged prior to testing at CSU. It should be noted, as discussed below, that sources may meet the formaldehyde concentration standard to meet the requirements as well as the 93 percent CO reduction requirement.

In response to the comment regarding long-term catalyst deactivation, we reemphasize that industry representatives that were involved in the testing at CSU agreed that the testing would be representative for catalyst performance, both short-term and long-term. We agree with the commenter that there may be two stages of deactivation. The first stage of deactivation may occur during the first 100 hours, or might occur as early as after 20 hours of operation. A second stage of deactivation may occur over a period of more than a 1,000 hours of operation. However, information received from catalyst vendors indicate that they are able to design the catalyst to achieve the guaranteed percent reduction at the end of the catalyst life (warranty period). The percent reduction may decline slightly in the beginning but the catalyst can be designed to stabilize at the desired percent reduction. Catalysts that can achieve emissions reductions of 93 percent or more for the life of the catalyst are within the technological limits of this technology. For these reasons, we feel the CO percent reduction requirement of the final rule is appropriate and justified.

Comment: Multiple commenters asked that EPA allow sources to choose either percent reduction or final concentration to comply with irrespective of the control technique employed.

Response: We agree with the commenters, and we feel it is appropriate to allow sources to choose either the percent reduction or formaldehyde concentration outlet limit to demonstrate compliance irrespective of the control technique employed. We have specified this flexibility in the final rule.

Comment: Two commenters argued that the proposed rule does not recognize DPF as a significantly more effective control device for reducing diesel exhaust emissions compared to diesel oxidation catalysts. One commenter asked that the final rule require the use of particulate traps on diesel engines. Another commenter expressed concern with the interaction of control equipment with diesel particulate traps. One commenter indicated that DPF can reduce diesel PM by at least 80 percent. According to the commenter, these traps can reduce CO by at least 90 percent.

Response: The commenters indicate that DPF are effective at reducing diesel exhaust emissions or diesel particulates. These are not HAP listed pursuant to section 112(b) of the CAA and, therefore, are not the pollutants that the final rule is targeting specifically. The EPA has recently received a request to list diesel exhaust pursuant to section 112(b) of the CAA and is currently reviewing that request. At the time of proposal, we investigated DPF. However, at the time of this investigation, the effectiveness of DPF on listed HAP emissions from stationary sources had not been demonstrated, and the technology had only been applied to a handful of stationary RICE. They, therefore, were not appropriate as a MACT floor technology. We examined DPF for their ability to reduce listed HAP and their cost effectiveness. We concluded that there were no data to show that this technology would be more effective at reducing listed HAP than oxidation catalysts. We also noted that this technology was more expensive than oxidation catalysts, so we did not use this technology as a basis for the proposed MACT levels. However, the proposal did allow the use of

technologies other than oxidation catalysts, including DPF, to meet the MACT requirements, which are generally numerical, though there were certain compliance options that differed depending on the emission control used on the engine. Since proposal, we have received new information regarding DPF resulting in reevaluating the feasibility of applying DPF to stationary RICE. (See Docket ID Nos. OAR–2002–0059 and A–95–35.) In addition, the final rule eliminates all provisions linking the standard to any particular control technology. Sources are free to choose any compliance option irrespective of the control technique applied. We have no reason to believe that DPF are incompatible with oxidation catalysts or that they cannot be used instead of oxidation catalysts. In the context of its mobile source regulations, we have found that DPF can be incorporated with other emission control devices without compatibility problems. We agree with the commenter that DPF may be able to reduce PM by at least 80 percent and they might be able to also reduce CO by at least 90 percent, at least in certain instances, though EPA has determined that these reductions can only be reliably achieved using ultra low sulfur fuel (15 ppm sulfur content by weight). However, we do not have any actual test data showing that DPF can reliably reduce HAP emissions from stationary CI engines at a level beyond that already required by the final rule. In particular, we do not have data regarding actual use of these devices on stationary RICE, or under the range of operating parameters reasonably expected for such engines. Also, the ultra low sulfur fuel (15 ppm sulfur content by weight) needed for this technology is not yet available in sufficient quantities in the U.S. We, therefore, have determined that there is currently not enough information regarding DPF as applied to HAP emissions from stationary CI engines on which to base the standard for the final rule.

Comment: One commenter urged EPA to rationalize its policy and address the serious public health impacts associated with diesel-powered RICE by establishing rigorous PM and clean fuel requirements in the final rule.

Response: We appreciate the comments regarding pollution from diesel-powered stationary RICE. While we agree that diesel engines emit pollutants of concern beyond those covered in the final rule, we do not feel it would be appropriate to establish diesel PM or clean fuel requirements in the rule. The final rule is a relatively narrow rule, regulating only listed HAP from stationary RICE. Diesel PM is not currently listed as a HAP under section 112 of the CAA. While regulation of diesel PM may be appropriate in the long-term, either as a criteria pollutant or as a listed HAP, we do not feel that the final rule, which proposed only to regulate HAP already listed under CAA section 112, is the appropriate place to promulgate final rules affecting criteria pollutants and precursors (like PM or NO_X). Similarly, the commenter does not provide an explanation of the need to regulate diesel fuel, except as it affects PM emissions. Therefore, we are not taking any final action with regard to these issues in the final rule.

Comment: Several commenters sought adjustment of the MACT emission limitations to reflect fully the test results that are the basis for the standard. One commenter indicated that the CO percent reduction standard for 2SLB engines should be adjusted to 58 percent to reflect the lowest percent reduction achieved during the EPA-sponsored emission testing at the CSU Engine Lab, which is the basis for the 2SLB standards. The formaldehyde percent reduction standard for 4SRB engines should be adjusted to 73 percent to reflect the lowest percent reduction achieved during the industry-sponsored testing, which is the basis for the 4SRB emission standards. Similarly, the formaldehyde concentration standard for 4SRB engines should be adjusted to 370 ppbvd at 15 percent oxygen to reflect the highest post-NSCR concentration of formaldehyde.

Response: We agree with the commenter that the CO percent reduction standard for 2SLB should be adjusted to 58 percent to fully reflect the possible variation for the best performing source for these engines. We have made this adjustment in the final rule to fully reflect the test results obtained for the 2SLB engine tested at CSU. We proposed an alternative formaldehyde emission limitation of 17 ppmvd for new 2SLB engines in the proposal. The concentration for the formaldehyde emission limitation was based on the minimum level of control achieved by the best controlled source. This approach takes into account the variability of the best performing engine. The formaldehyde emissions at CSU ranged from 7.5 ppmvd to 17 ppmvd. Therefore, we chose 17 ppmvd at proposal. The 17 ppmvd formaldehyde concentration was based on a run conducted at low load (69 percent). After reviewing our approach at proposal, we have found it inconsistent to establish the alternative formaldehyde emission limitation based on the level achieved during a low load test. The approach that we have used for other engine types in establishing the alternative emission limitations was to establish the limits based on high loads and to require compliance at high loads. The expected trend is for emissions to generally increase with decreasing load; however, we do not have sufficient data to take the effect of load into account in establishing the alternative emission limitations. Because of this, the emission limitations are based on performance at high loads. We expect that if the emission limitations are achieved at high load then the technology will be operating appropriately and will also operate appropriately at lower loads. To be consistent, we have established in the final rule an alternative formaldehyde emission limit for new 2SLB engines of 12 ppmvd. This number is based on the minimum level of control achieved by the best performing engine at high load conditions. We have specified in the final rule that performance tests must be conducted at high load conditions, defined as 100 percent ±10 percent. If a source has demonstrated compliance with the emission limit at high loads it is assumed that the technology is operating appropriately and will also operate appropriately at lower loads. Sources are not required to meet the emission limitation at low load.

As described in the preamble to the proposed rule, we reviewed emissions data from an industry sponsored formaldehyde emission test conducted on two 4SRB engines. We selected the best performing engine based on the highest average formaldehyde percent reduction. The average reduction was 79 percent for that engine; however, to establish variability we looked at each of the 12 individual test runs performance on that engine. The percent reduction varied from 75 percent to 81 percent. At proposal, we selected 75 percent for the MACT floor. However, since proposal, we have reviewed the method we used to set the MACT floor for existing 4SRB engines. We feel it would be more appropriate to include in the analysis the data from the lower performing engine, thus using more than a single data point in determining the MACT floor for existing 4SRB engines. The revised approach was discussed in detail in response to a previous comment. In that response, we described our revised approach which takes into account the performance of both engines tested, using a weighted average where the data point for the lower performer will be worth 22 percent and the level for the higher performer will be worth 78 percent. In

addition, to be consistent with the approach followed for other engine types, we have excluded runs conducted at low loads in setting the MACT floor. As previously indicated elsewhere in this document, since the MACT floor is based on emissions data from runs at high loads, performance tests must be conducted at high load conditions, defined as 100 percent load, ±10 percent. The commenter stated that the formaldehyde percent reduction standard for existing 4SRB engines should be adjusted to 73 percent to reflect the lowest percent reduction achieved during the industry-sponsored testing. Although the commenter is correct in stating that 73 percent formaldehyde reduction was the lowest average reduction, 73 percent reduction was achieved during a run that was not conducted at high load. For this reason, it is not appropriate to use the 73 percent formaldehyde reduction in the MACT floor analysis. Similarly, the run where the formaldehyde concentration was measured at 370 ppbvd was also not conducted at high load, and was, therefore, not used in our analysis of the MACT floor for existing 4SRB engines.

Comment: One commenter requested that the ''burn-in'' period during commissioning of new or rebuilt engines should be exempted from emission limits. Catalyst manufacturer warrantees typically require a ''burn-in period'' for new and rebuilt engines prior to placing the catalyst on stream. This is intended to allow seating of critical engine components (*e.g.*, piston rings). Catalyst placed on stream before this burn-in period is subject to physical damage from engine backfire and poisoning and or fouling from crankcase oil blow-by. The EPA has acknowledged this need in a prevention of significant deterioration and title V Permit by including the following language: ''The permittee shall be allowed to operate the replacement/overhauled engine without the use of the catalytic converter assembly for a period not to exceed 200 hours from the engine startup, unless a longer time period has been approved by EPA, in writing.'' The commenter recommended that deviating from the emissions limits during the burn-in period or the first 200 hours of operation of a new or rebuilt RICE not be considered a violation. The commenter recommended that a statement be added at § 63.6640(d) that deviating from the emissions limits during the burn-in period or the first 200 hours of operation of a new or rebuilt RICE is not a violation.

Response: We agree with the commenter that an engine burn-in period of 200 hours is appropriate prior to installing the catalyst to prevent damage to the catalyst. We have, therefore, specified that new or rebuilt engines may operate for up to 200 hours prior to installing the catalyst in the final rule and that this will not be considered a violation. However, sources have 180 days after the compliance date specified for their source to conduct the performance test and initial compliance demonstration and the 200 hours of burn-in time must be conducted within these 180 days.

Comment: One commenter did not agree with EPA's determination of the MACT floor for 4SLB RICE. The database used to determine the MACT floor is based on pre-1999 information and includes 542 engines from Wyoming. Since 1999, Wyoming has permitted 2,100 4SLB engines. Approximately 62 percent of the greater than 500 HP 4SLB permitted since 1999 have been required to be equipped with oxidation catalyst to control formaldehyde. The EPA reports the number of existing 4SLB used in determining the MACT floor at 4,149. Including the 4SLB engines greater than 500 HP permitted since 1999 in Wyoming, the total is 5,664. Of this total, 935 engines have permit conditions requiring oxidation catalyst to control formaldehyde, which is 16.5 percent of the total. Section 112(d) of the CAA requires the emission standard for existing sources be no less stringent than the emission limitation achieved by the best performing 12 percent of existing sources. The commenter contended that the database used to determine the MACT floor is incomplete, and EPA must reevaluate the MACT floor including permitting actions post 1998.

Response: We contacted the commenter who submitted this comment. The commenter stated that mostly all of the engines that have been permitted are minor sources of HAP. Since the 4SLB engines permitted in Wyoming are nearly all at minor sources of HAP, it is not accurate to add these sources to the determination of the average of the best performing 12 percent of existing sources from the source category. The determination of the average of the best performing 12 percent of existing sources must be based on the sources regulated. Since the final rule only covers major sources, it is not appropriate to include the minor source engines permitted to require oxidation catalyst in Wyoming. Moreover, the calculation of the MACT floor does not require that we include reductions that were implemented within 18 months of the proposal, or 30 months of the final rule. It is not clear how many of the engines the commenter discusses were equipped with oxidation catalysts during that period. Therefore, we have not reevaluated the floor for existing 4SLB engines. The MACT floor of existing 4SLB engines remains at no emissions reductions.

E. Monitoring, Recordkeeping, and Reporting

Comment: Multiple commenters contended that the CO CEMS requirement for large lean burn engines is unreasonable. The commenters stated that parameter monitoring and periodic testing should be offered to CO monitoring on all lean burn engines. One commenter noted that given that the best available emissions control technology for RICE is a passive catalyst system and that the operator cannot reduce or improve HAP removal efficiency, simplified and less costly environmental monitoring requirements should be adopted.

Response: We now feel that the proposed requirement for 2SLB, 4SLB, and CI engines 5,000 HP or above complying with the requirement to reduce CO emissions using an oxidation catalyst to use CO CEMS is unnecessary and inappropriate. The costs associated with a CO CEMS is estimated to be over $200,000 in capital costs and nearly $60,000 in annual costs. We consider these costs to be excessive. For these reasons, we feel it is not appropriate to include a requirement for large lean burn and large CI engines to install CO CEMS in the final rule. We feel that the combination of periodic stack testing and parameter monitoring is a proper and reasonable alternative for large engines. The testing of CO will ensure, on an ongoing basis, that the source is meeting the CO percent reduction requirement. In addition to stack testing, 2SLB, 4SLB, and CI engines meeting the CO percent reduction requirement and using an oxidation catalyst must continuously monitor and maintain the catalyst inlet temperature as well as maintain and monitor the pressure drop across the catalyst monthly. These parameters serves as surrogates of the oxidation catalyst performance and by monitoring and maintaining these parameters, continuous compliance between stack testing will be ensured. Stationary RICE meeting the CO percent reduction requirement that are not using an oxidation catalyst must petition the Administrator for approval of operating limitations and must continuously monitor and maintain the operating parameters that are approved (if any).

We are including CO CEMS as an option to periodic stack testing and parametric monitoring for all lean burn

and CI engines in the final rule, but it is not required.

Comment: One commenter observed that deficiencies noted in the proposed rule with regard to the test methods and performance protocols render CO CEMS infeasible for the RICE MACT. While CO CEMS have been demonstrated on some facility types, their application to RICE is very limited. Vendor claims for CO CEMS and CO instrumental analyzers, unless accompanied by emissions test data obtained under known and controlled conditions applicable to the subject source type, should not be considered adequate proof of availability and performance. While it may be appropriate for EPA to solicit comments on its test methods and technical monitoring requirements, the commenter found that it is inappropriate to propose requirements for measurement systems prior to resolving the current deficiencies with the EPA protocols.

Response: We disagree with the commenter that the application of CO CEMS must be considered infeasible for all RICE unless accompanied by emission test data obtained under known and controlled conditions applicable to the subject source category. Since we have previously established acceptable CEMS performance specifications, we can allow the RICE source owner and operator the optional use of CO CEMS within such performance standards as an effective parameter monitor. However, as discussed above, we do agree that we should not require the installation of CEMS at all affected facilities.

Comment: Many commenters asserted that the fuel flow and HP limits should be removed. Five commenters recommended that EPA specify that the emission standards only apply within a 60 to 100 percent load range and performance testing should be conducted within that load range. One commenter suggested revising MACT requirements to have emission limits and performance testing applicable at higher load conditions instead of establishing the lowest load to be operated in the future. Another commenter recommended that the final standards only apply down to the lowest load for which EPA has data and should specify that the performance test be conducted in that load range. One commenter stated that should EPA pursue minimum load testing and compliance in the final rule, the owner and operators should be allowed to retest the unit at some time later than the initial performance test to enlarge the operating range. The lower operating load and fuel range should then be based on the lowest load that has demonstrated compliance irrespective of whether the demonstration occurred in the initial or later performance tests.

One commenter stated that the NESHAP provide two options. One is to use a catalyst and the other is to limit the formaldehyde. If the formaldehyde limit is chosen, however, the engine must maintain an operating load of 95 percent or more of the load established in the initial testing, which under many circumstances is impractical. For example, this option cannot be chosen for the commonly used variable-load application engine. For variable load engines, there is no choice but to use a catalyst. The commenter believed that this approach limits the flexibility in controlling these engines.

Response: In the proposed rule, we required sources complying with the alternative formaldehyde limit to maintain an operating load equal to or greater than 95 percent of the operating load established during the initial performance test or maintain a fuel flow rate equal to or greater than 95 percent of the fuel flow rate established during the initial performance test. These sources were also required to comply with any additional operating limitations approved by the Administrator. Based on information received during the public comment period, we have reached the conclusion that maintaining the load or fuel flow rate within 95 percent of that established during the initial performance test may be impractical for many applications, especially those in load following applications. Therefore, we have not included the requirement to maintain load or fuel flow rate in the final rule. Sources complying with the alternative formaldehyde limit that use an oxidation catalyst or NSCR must continuously maintain and monitor the catalyst inlet temperature and measure the pressure drop across the catalyst monthly. Sources complying with the alternative formaldehyde limit that do not use an oxidation catalyst or NSCR must petition the Administrator for operating limitations to be continuously monitored. In the petition for approval of operating limitations, we recommend that sources consider establishing load or fuel flow rate as possible operating parameters to continuously monitor. Finally, we have based the emission standard on test results from high load tests only. Typically, as load decreases, the concentration of HAP increases. Comments received support this trend. Therefore, we have specified in the final rule that performance tests must be conducted at high load conditions, defined as 100 percent ±10 percent.

Comment: Several commenters contended that the temperature ranges at the catalyst inlet should be revised. Six commenters supported an operating range of 450°F to 1350°F for lean burn engines and the ability to develop customized catalyst inlet temperature ranges based on specific engine operating parameters. One commenter recommended using 450°F minimum catalyst inlet temperature for 2SLB. One commenter also said that owners and operators should be allowed to identify more appropriate temperature ranges based on performance testing, control device design specifications, manufacturer recommendations, or other applicable information (such as a performance test on a similar unit).

Response: We proposed that lean burn and CI engines complying with the requirement to reduce CO emissions maintain the temperature of the stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 500°F and less than or equal to 1250°F. We required the catalyst inlet temperature to be maintained to ensure proper operation of the oxidation catalyst. We stated in the preamble to the proposed rule that, in general, the oxidation catalyst performance will decrease as the catalyst inlet temperature decreases. Also, if the catalyst inlet temperature is too high, oxidation catalyst performance could be affected. Finally, the oxidation catalyst inlet temperature cannot be too low, or the reduction of HAP emissions may be compromised. For these reasons, we proposed that sources complying with the CO reduction requirement using an oxidation catalyst maintain the catalyst inlet temperature within 500°F and 1250°F. Several comments received during the public comment period indicated that the temperature range we proposed for catalyst inlet temperature should be expanded. Commenters suggested that the lower end of the temperature range should start at 450°F. The level of the standard for 2SLB engines is 58 percent CO reduction. Similar CO reduction was seen at CSU for 2SLB engines where the exhaust temperature was 450°F. For this reason, we agree with the commenters that the catalyst inlet lower temperature should be set at 450°F. Furthermore, we feel that the oxidation catalyst will perform adequately at a temperature of 1350°F. This was discussed in a memorandum included in the rule docket (Docket ID Nos. OAR–2002–0059 and A–95–35). Commenters also stated that Waukesha Pearce Industries, Inc. includes 1350°F in their limited warranty statements for

oxidation catalysts. Therefore, we have written the temperature range requirement for catalyst inlet temperatures to be between 450°F and 1350°F in the final rule. Regarding the comment that owners and operators should be allowed to identify more appropriate temperature ranges, we feel that requiring a catalyst inlet temperature range of 450°F to 1350°F is appropriate. Based on information from the testing at CSU, information from catalyst vendors, and information provided in comment letters submitted to the docket, we feel we have adequate information that supports requiring a catalyst inlet temperature range of 450°F to 1350°F, and we do not feel it is necessary to allow owners and operators the ability to identify and define other temperature ranges. Owners and operators have the option to petition the Administrator for other operating parameters following the procedures in section 63.8 for alternative monitoring procedures.

Comment: Many commenters stated that the requirement to measure pressure drop should be removed. One commenter indicated that the operating limitation not to exceed a pressure change of 2 inches of water column from the initial performance test has the potential to be problematic in practice. Another commenter stated that there is no need for continuous pressure drop measurements on engines running exclusively on natural gas and at high loads. The commenter has seen very little problems with catalyst fouling on their lean burn RICE equipped with oxidation catalysts. The commenter understood that it is an issue in some installations, but concludes that they would be applications either running on other fuels or where engines are run at idle or very low load for long periods of time. One commenter stated that the proposed requirements to continuously monitor and maintain a prescribed pressure differential across the catalyst should be removed from the final rule for the following reasons: (1) Although significant change in differential pressure across the catalyst may provide an indication that the catalyst has become fouled, EPA has presented no evidence to suggest that an increase in 2 inches of water column means that catalyst performance is impacted; (2) industry data demonstrates that the pressure drop can increase more than 2 inches of water column without impacting catalyst performance. Such increases may even occur because of engine operating conditions. For that reason, EPA's proposed 2 inches of water column condition might forbid engines to operate within part of their normal operating range; and (3) vendors do not treat pressure differential as a continuous operating parameter requirement. Rather it is presented as a maintenance requirement for catalysts on some engines. The general duty clause of § 63.6(e)(1)(i) is sufficient to address pressure drop issues. Finally, one commenter stated that the uniqueness of the installation should be given consideration in whether or not pressure drop is required to be monitored.

Response: We proposed a requirement for 4SRB engines complying with the requirement to reduce formaldehyde emissions using NSCR and 2SLB, 4SLB, and CI engines less than 5,000 HP complying with the requirement to reduce CO emissions using an oxidation catalyst to maintain the catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water from the pressure drop across the catalyst measured during the initial performance test. Catalyst vendors have indicated to EPA that the pressure drop across the catalyst may be a good parameter to indicate catalyst performance and that an increase in pressure drop is an indication of poor catalyst performance. The pressure drop across the catalyst can indicate if the catalyst is damaged or fouled. If the catalyst is damaged or becomes fouled, the catalyst performance would decrease. For the reasons provided, we feel it is appropriate to use the pressure drop as it serves as a surrogate of the catalyst performance.

We determined at proposal that if the pressure drop across the catalyst deviates by more than 2 inches of water from the pressure drop across the catalyst measured during the initial performance test, the catalyst might be damaged or fouled. This was based on information received from catalyst vendors which indicated that if the pressure drop changes by more than 2 inches of water column, the catalyst should be inspected for damage or fouling. For this reason, we feel it was appropriate to specify that the pressure drop across the catalyst should not change by more than 2 inches from the pressure drop measured during the initial performance test. Anything higher than 2 inches might indicate damage or fouling of the catalyst. We feel it is appropriate to maintain the pressure drop requirement as proposed. However, we have reevaluated our position regarding requiring sources to monitor the pressure drop across the oxidation catalyst on a continuous basis and are no longer requiring sources to install a CPMS to monitor this parameter continuously. The pressure drop across the catalyst is not likely to change within short periods of time, but is a parameter the owner and operator might see changing over a longer period of time, not within hours or days. This is consistent with comments that stated that vendors do not treat pressure differential as a continuous operating parameter requirement. Rather it is presented as a maintenance requirement for catalysts on some engines. For this reason, we feel it is appropriate to require sources that must comply with the pressure drop requirement to measure this parameter monthly, as we do not expect the pressure drop across the catalyst to change significantly more frequently than monthly. Regarding the comment that the uniqueness of the installation should be given consideration in whether or not pressure drop is required to be monitored, we feel that we have gathered sufficient information from catalyst vendors that supports requiring the pressure drop to be monitored and maintained monthly. In addition, the commenter did not describe or provide information regarding how the uniqueness of the installation would affect whether or not monitoring and maintaining the pressure drop should be required.

Comment: Many commenters stated that the requirement to measure the temperature rise for rich burn RICE should be removed. One commenter had the opinion that 5 percent difference in temperature is not feasible or workable in practice. While a NSCR catalyst is more likely to show a positive temperature change across the catalyst, very low, or even negative, temperature changes are possible while the catalyst is functioning normally. One commenter did not think it is appropriate to specify that the temperature rise across a NSCR catalyst has to stay within 5 percent of the temperature rise (or any other specific value) measured at the initial source test. The commenter believed that this seems arbitrary. At one facility, the commenter has seen zero temperature change across the catalyst. Yet, NO_X, CO and volatile organic compounds (VOC) reductions were all occurring at high efficiency and in full compliance with requirements. It would be more appropriate to simply require that NSCR be operated in conjunction with an air-to-fuel ratio controller and that the catalyst inlet temperature simply be hot enough to ensure it is working, but not too hot to damage the catalyst.

One commenter said that Table 1b of the proposed rule stipulates that 4SRB RICE must ensure that the temperature

rise across the catalyst is no more than 5 percent different. The commenter asked what if the temperature is 10 percent different and would this not represent a higher degree of oxidation. The commenter questioned why this should not be allowed.

Response: As summarized above, we received several comments regarding the requirement in the proposed rule that 4SRB engines monitor and maintain the temperature rise across the NSCR. Based on the information received, we agree with the commenters that such a requirement would be inappropriate and most likely would not provide an accurate representation of how the catalyst is performing. We are including the requirement to measure the catalyst pressure drop monthly and to maintain and continuously monitor the catalyst inlet temperature to ensure that it remains between 750°F and 1250°F. It is our opinion that monitoring and maintaining these two parameters is sufficient to ensure proper catalyst operation. Therefore, we have not included the requirement to maintain the catalyst such that the temperature rise across the catalyst stays within 5 percent of the temperature rise measured during the initial performance test in the final rule.

Comment: One commenter argued that the requirement for an immediate startup, shutdown, and malfunction (SSM) report should indicate that this is required only when the actions addressing the malfunction were inconsistent with the startup, shutdown, and malfunction report (SSMP).

Two commenters stated that EPA should eliminate the immediate SSM report indicated in Table 7, item 2, of the proposed rule. One commenter further noted that any reporting requirements should be consistent with the General Provisions and the December 2002 proposal relating to reporting malfunctions only versus startups and shutdowns.

Two commenters recommended eliminating the requirement for an immediate SSMP in Table 7 of the proposed rule.

Response: We agree that immediate SSMP reports are unnecessary and have the potential of becoming a burdensome activity for sources with frequent startups and shutdowns. We have specified in the final rule that an immediate SSMP report is only required when actions addressing the startup, shutdown, or malfunction were inconsistent with the SSMP.

Comment: Two commenters requested annual compliance reports instead of the requirement of semiannual reporting of compliance reports in § 63.6650(3). One of the commenters asked that the language in this paragraph be modified to allow the flexibility for annual compliance reports in order to make the final rule consistent with other MACT standards. The commenter noted that they are seeing in the various State and Federal regulations the requirements for monthly, quarterly, semiannual, and annual reports, and keeping track of these is becoming quite difficult. One of the commenters stated that this will create an unnecessary paperwork burden for both the regulated community as well as for the regulatory agencies. A more reasonable approach would be to require an annual compliance report timed concurrently with the state EPA's typical emissions reporting requirement.

Response: We disagree that semiannual compliance reports are a burden. We feel that the submittal of semiannual reports will assist in identifying problem areas within a reasonable period of time. The requirement for semiannual compliance reporting is not inconsistent with previous MACT standards. Several MACT standards require compliance reports to be prepared and submitted semiannually. Enforcing agencies have been requiring semiannual compliance reports for a long time, and this has worked well and has helped EPA enforce rules appropriately. We feel the submittal of semiannual compliance reports is appropriate for stationary RICE complying with the final rule.

Comment: One commenter stated that readily available electronic records do not have to be stored on-site. In § 63.6660(c), the proposed RICE MACT requires that records be kept on-site for the first 2 years following the date of each occurrence, measurement, maintenance, corrective action, report or record. This requirement does not recognize the trend toward computerization of monitoring records. Many sites are making an intentional effort to move away from paper records of air compliance critical data whenever the opportunity presents itself. These electronic records reside on hardware referred to as servers. For a variety of reasons, these servers are not always located at the major source that would be affected by the RICE MACT. There are cases at companies where the server for an affected source is not located in the same State as the affected source. The concept of ''readily accessible'' should be more important, relative to current records, than the need for them to be on-site at the major source. The commenter urges EPA to recognize the trend to electronic record keeping by changing § 63.6660(c) to read as follows: ''(c) Each record must be readily accessible in hard copy or electronic form on-site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report or record according to § 63.10(b)(1). You may keep the records off-site for the remaining 3 years.''

Response: We agree with the commenter and feel that records that can be accessed on-site by a computer are valid and should be considered on-site records. Our understanding of the General Provisions is that it allows the interpretation that records that can be accessed on-site are acceptable. In any case, we have written § 63.6660(c) in the final rule according to the commenter's suggestion.

F. Testing

Comment: Several commenters pointed out that there is a 50 parts per million (ppm) NO_X limit advisory with the use of CARB Method 430. The commenters asked EPA to follow the direction of the CARB advisory. One commenter added that due to concerns about matrix interferences with CARB Method 430, as expressed in an advisory released by CARB, the commenter believed that it is inappropriate to include CARB Method 430 as a candidate method until its governing agency has more thoroughly researched method deficiencies and revised the method or rescinded the advisory.

Response: We agree that CARB Method 430 use should not be cited in the final rule. Therefore, we have not included CARB Method 430 as a test method in the final rule.

Comment: A few commenters recommended that EPA include proposed Method 323. One commenter felt that it is imperative that multiple test methods and technological approaches be available for formaldehyde measurement from engines. The EPA Method 323 addresses this need and appears to offer a reasonable alternative to FTIR for formaldehyde testing of engines. The method detection limits are within the range necessary to demonstrate compliance with a formaldehyde based limit. This method was investigated and developed by the Gas Technology Institute (GTI) as a low-cost alternative for engine formaldehyde measurement and has been validated for application to internal combustion engines in research conducted by GTI.

One commenter said that this method has the advantage of actually having been field-validated at the required concentration. Furthermore, it is simpler and less costly than the other methods. It is the commenter's

experience that with a similar chilled-impinger method for VOC (Method 25.3), they found it was critical to maintain near-ice-water temperatures in order to achieve 100 percent capture. The method might be modified by adding a final impinger and having that analyzed separately for breakthrough. Sulfur dioxide is listed as an interference, possibly because of its ability to bond with aldehydes. This bond is broken under acidic conditions. If this is found to be a problem, perhaps the sample can be acidified more to break up any complexes.

Response: We agree with the commenter and have included Method 323 as an optional method for natural gas-fired units in the final rule. We plan to develop a FAQ sheet for Method 323. We may include the commenter's suggestion for analyzing for breakthrough with another impinger and a caution to check the impinger exhaust temperature when assessing the data quality.

Comment: One commenter expressed the view that since EPA SW–846 Method 0011 uses a similar analytical approach as CARB Method 430, has not been validated for application to engines, and has quality assurance requirements considered less thorough than CARB Method 430, it should be excluded from the list of acceptable methods.

Response: We agree with the commenter that this method should not be specified as an acceptable method for this application. This method has not been included in the final rule.

Comment: A few commenters stated that EPA should allow ASTM Method D6348 as equivalent to Method 320. One commenter stated that the method is self-validating and includes clarity that the commenter believed will provide better consistency and reduce the likelihood of errors as FTIR becomes more widely implemented by the source test community. The ASTM method was developed and approved following a refereed process and considering the input and review of leading experts in the field.

Response: We identified ASTM D6348–03 as a potential national consensus based method in addition to Method 320 and Method 323. Upon review, we approved this method as an alternative to Method 320 for formaldehyde measurement provided in ASTM D6348–03, Annex 5 (Analyte Spiking Technique), percent R must be greater than or equal to 70 and less than or equal to 130.

Comment: Some commenters stated that quarterly emission testing with CO portable units should not be full performance tests. This provision is burdensome and unnecessary. The final rule should not require that the quarterly emission tests be full performance tests for the following reasons: (1) For full performance tests, engines in load-following applications may need to conduct emissions testing at multiple operating conditions, in accordance with the General Provisions' requirement that performance tests be conducted for representative conditions; (2) facilities with load-following operations, such as natural gas transmission and storage, may not be able to operate the engines over the full range of operating conditions on a quarterly basis; (3) full performance tests impose significant burden on the owner or operator to develop site-specific test plans, provide notification to the permitting authority 60 days in advance of the test, and submit the full results within 60 days of completion of the testing; and (4) review of other MACT standards indicates that full performance tests are not required more frequently than annually.

Response: We agree with the commenters that requiring full performance tests quarterly for sources complying with CO reduction requirement may impose significant burden on the owner or operator to develop site-specific test plans, provide notification to the permitting authority 60 days in advance of the test, and submit the full results within 60 days of completion of the testing. We now feel that quarterly testing for CO is unnecessary and inappropriate. In the final rule, we have specified that new 2SLB, new 4SLB, and new CI engines complying with requirement to reduce CO emissions must conduct semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved. Semiannual performance testing for CO in addition to monitoring and maintaining operating parameters will ensure, on an ongoing basis, that the applicable CO percent reduction requirement is being met. After demonstrating compliance for two consecutive tests, the frequency can be reduced to annually. However, if an annual performance test indicates a deviation of CO emissions from the CO reduction requirement, you must return to semiannual performance tests.

Comment: Some commenters contended that additional performance tests should not be required when NSCR or oxidation catalysts are replaced with identical units.

Response: We disagree. Additional performance tests are required to be performed even though an emission control device is replaced with an identical unit. The performance of identical catalysts can vary significantly, and it is not guaranteed that the NSCR or oxidation catalyst will achieve the same performance levels.

Comment: One commenter asked that EPA include similar language as in the Petroleum Refinery MACT for Catalytic Cracking Units which has the provision to make adjustments to one of the monitored operating parameters to acknowledge that it may not be possible to achieve worst-case operation during the performance test. In this scenario, the testing of a similar unit should be allowed to serve as the basis for establishing acceptable inlet temperatures.

One commenter remarked that initial performance tests should only have to be performed on one engine when an installation is provided with several identical engines.

Response: We do not agree that it is appropriate to allow a facility with identical engines to conduct testing on only one of the units to establish operating parameters. Although the units are identical, operating parameters, as well as emissions, could vary significantly from unit to unit. We do not agree that it is appropriate to allow a facility with identical engines to conduct performance tests on only one of the units to demonstrate compliance with the emission limits for all of the identical units. It is our experience that emissions from identical units can vary significantly.

Comment: One commenter stated that manufacturer's performance data should be allowable in lieu of an initial performance test.

Response: We are not allowing manufacturer's performance data in lieu of an initial performance test. Performance data provided by the manufacturer may not be representative of how the engine will perform in the field and may overestimate the engine's performance.

Comment: One commenter contended that the stack testing should be no more frequent than semiannual for CO. The stack testing for formaldehyde should be no more frequent than annual. The commenter added that both should also include the ability to go to even less frequent testing based upon good performance.

Response: We agree with the commenter and feel that it is appropriate to require semiannual performance tests for CO for sources meeting the CO percent reduction requirement. This has been specified in the final rule. The rationale for reducing the CO testing requirement was previously discussed. For CO stack

testing, we also agree with the commenter that it is appropriate to allow sources that demonstrate compliance for two consecutive tests, to reduce the frequency of subsequent performance tests to annually. However, if an annual performance test indicates a deviation of CO emissions from the CO reduction requirement, sources must return to semiannual performance tests. Regarding formaldehyde testing, we disagree with the commenter and feel that we have appropriately set the testing requirements for formaldehyde at semiannual performance tests. Periodic stack testing for CO and formaldehyde will ensure, on an ongoing basis, that the source is meeting the emission limitation requirements. For formaldehyde stack testing, if you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. However, if the results of any subsequent annual performance test indicate that the stationary engine is not in compliance with the formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

Comment: One commenter was of the opinion that EPA should allow facilities complying with the formaldehyde emission limitation to use existing performance test data to demonstrate initial compliance with the emission limit.

Response: We agree with the commenter that existing performance test data can be used to demonstrate compliance with the emission limit. The facility must petition the Administrator for approval, and demonstrate that the tests were conducted using the same test methods specified in the subpart, the test method procedures were correctly followed, no process or equipment changes have been made since the test, and the data is of good quality and is less than 2 years old. Existing test data can only be used to demonstrate initial compliance; after the initial compliance demonstration, facilities must then begin to follow the semiannual compliance test schedule. This has been specified in the final rule.

G. Risk-Based Approaches

The preamble to the proposed rule requested comment on whether there might be further ways to structure the final rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment. Specifically, we requested comment on the technical and legal viability of three risk-based approaches: An applicability cutoff for threshold pollutants under the authority of CAA section 112(d)(4), subcategorization and delisting under the authority of CAA section 112(c)(1) and (9), and a concentration-based applicability threshold.[2]

We indicated that we would evaluate all comments before determining whether either approach would be included in the final rule. Numerous commenters submitted detailed comments on these risk-based approaches. These comments are summarized in the Response-to-Comments document (*see* **SUPPLEMENTARY INFORMATION** section).

Based on our consideration of the comments received and other factors, we have decided not to include the risk-based approaches in today's final rule. The risk-based approaches described in the proposed rule and addressed in the comments we received raise a number of complex issues. In addition, we must issue the final rule expeditiously because the statutory deadline for promulgation has passed, and we have agreed to a binding schedule in a consent decree entered in *Sierra Club* v. *Whitman*, Civil Action No. 1:01CV01537 (D.D.C.). Given the range of issues raised by the risk-based approaches and the need to promulgate a final rule expeditiously, we feel that it is not appropriate to include any risk-based approaches in today's final rule.

H. Other

Comment: One commenter stated that NO_X increases due to oxidation catalysts for 2SLB and 4SLB engines should be considered in evaluating the cost and benefits of the proposed rule. Test results for 2SLB and 4SLB engines (Docket ID Nos. OAR–2002–0059 and A–95–35) equipped with oxidation catalysts indicate an increase of NO_X emissions up to about 15 percent and 12 percent for 2SLB and 4SLB engines, respectively. It is not clear that the impacts of this NO_X increase has been addressed with respect to the ability of sources to comply with State and local NO_X limits or impacts on the environment.

Response: We did consider NO_X increases due to oxidation catalysts for 2SLB and 4SLB engines. However, the NO_X increases resulting from 2SLB and 4SLB installing oxidation catalyst controls to comply with the final rule are far less than the NO_X decreases resulting from 4SRB engines installing NSCR controls to comply with the final rule, resulting in a net decrease in NO_X emissions due to the final rule and a benefit to the environment overall. In addition, oxidation catalysts are not specifically required by the final rule and as only new 2SLB and new 4SLB engines are affected by the final rule, sources that are concerned about NO_X emissions can use other methods of HAP emission control that are less problematic from a NO_X control perspective (like in-cylinder controls), or they can use NO_X control to reduce NO_X from engines using oxidation catalysts.

Comment: One commenter contended that data from testing of 2SLB and 4SLB should be disallowed. The commenter provided the following reasons: (1) The range of engine operating conditions in the testing of the 2SLB engine and quite probably the 4SLB engine are far leaner than the leanest engine in the pipeline RICE fleet. This is indicated by the extremely low NO_X emissions. (2) Engines equipped with pre-combustion chambers operating extremely lean are not typical examples of the 2SLB and 4SLB fleet. (3) The range of exhaust temperatures, air-to-fuel ratios, and exhaust oxygen are not typical of 2SLB and 4SLB. (4) Engines were laboratory research engines. They were not equipped with turbochargers, but with turbocharger simulators that do not have the same traits as a turbocharger. (5) Found no information in the piping diagrams of insulation on the ducting and manifolds leading from the engine to the catalyst. Certainly all ducting is insulated in industry. The EPA needs to determine if any insulation was in place. (6) The following excerpt from page 77840 of the proposed rule is not true: ''In general, higher exhaust temperatures lead to better catalyst performance. This difference in temperatures is a function of the inherent design of these engine types and cannot be controlled by the operator.'' By controlling the air-to-fuel ratio of the engine, the exhaust gas temperature, and thus the catalyst inlet temperature, can be precisely controlled. (7) If HAP data from the 2SLB and 4SLB testing is allowed to stand, then this testing must become the definitive work on all pollutants tested as well, including NO_X. The NO_X data should be forwarded to the criteria pollutant group.

One commenter disagreed that the engine at CSU is representative of 2SLB engines in the industry due to low NO_X levels, high levels of oxygen, and low exhaust temperatures. The 2SLB engine was running considerably leaner than

[2] *See* 68 FR 1276 (January 9, 2003) (Plywood and Composite Wood Products Proposed NESHAP) and Docket ID No. A–98–44 (White Papers submitted to EPA outlining the risk-based approaches).

similar model engines at similar conditions.

Response: We compared these parameters to other 2SLB and 4SLB engines for which we have information in the emissions database. The NO_X and oxygen levels and exhaust temperatures for the 2SLB and 4SLB engines tested at CSU are similar to those observed for other non-CSU 2SLB and 4SLB engines in the emissions database. This analysis is presented in a memorandum included in the rule docket (Docket ID Nos. OAR–2002–0059 and A–95–35). We feel that the 2SLB and 4SLB engines tested at CSU are representative of 2SLB and 4SLB engines in the industry. As far as insulation is concerned, the catalyst inlet temperature recorded should represent catalyst performance at that temperature regardless of insulation presence or absence. It should be remembered that the MACT standard for new sources under CAA section 112(d) is based on the level of control of the best controlled similar source.

Comment: One commenter stated that the testing did not include in its test protocol dynamic spiking that is required in Method 320 which leaves some question to the integrity of the sample measured in the test program.

Response: An alternative quality assurance procedure was proposed and followed resulting in data of sufficient quality. The entire FTIR sampling analysis system was validated on a 2SLB engine by a dynamic spiking of formaldehyde, acrolein, and acetaldehyde. The data were assessed following Method 301 criteria. Then, on a daily basis, the analyzer was checked for linearity and alignment, a diagnostic or transfer standard consisting of the CO was used to confirm accuracy, a second diagnostic standard consisting of CO_2, CO, methane, and NO_X was introduced using the same procedure. Then to check sampling system integrity, a formaldehyde standard was introduced directly into the instrument and a reading obtained, then it was introduced into the sampling system at the sample probe upstream of the filter and another reading obtained. The sampling system pass/fail criterion was 100 percent ±10 percent of the direct-to-the-analyzer reading. Finally, the diagnostic and system integrity procedures were repeated at the end of each day testing. This procedure resulted in data of sufficient quality.

Comment: One commenter asked that EPA clarify retesting requirements on new sources. Section 63.6610 of the proposed rule is ambiguous on the General Provisions requirement for some new sources to retest 3 years after promulgation in § 63.7(a)(2)(ix). Table 8, item 24, or the proposed rule does not clarify the issue.

Response: Section 63.7(a)(2)(ix) of the General Provisions discusses performance test dates if the promulgated standard is more stringent than the proposed standard. Sources that commenced construction or reconstruction between the proposal and promulgation have the option to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator must conduct a second performance test within 3 years to demonstrate compliance with the promulgated standard. Since the promulgated standard is in some cases more stringent than the proposed standard, we have specified in § 63.6610(c) of the final rule that sources that commenced construction or reconstruction between the proposal and promulgated have this option.

Comment: A few commenters asserted that the basis for any size threshold should be expressed in site-rated HP as opposed to manufacturer's nameplate HP. One commenter gave the following reasons: (1) The database used by EPA to determine the MACT floor provisions likely includes the site-rated HP, based on the facility's air permit; (2) stationary RICE are typically identified by site-rated HP, rather than manufacturer's nameplate HP in the facility's title V permit and not all engines have HP on the nameplate; and (3) the Federal Energy Regulatory Commission certified HP for natural gas transmission facilities are issued based on site-rated HP.

Response: We contacted one of the commenters who submitted this comment and also an engine manufacturer. Information received from both sources indicated that there may be differences between site-rated HP and the manufacturer's nameplate rating. Factors such as altitude, temperature, fuel, etc. affect what the site-rated HP will be for the engine at a specific location. Some manufacturers include the specific site-rating on the nameplate of the engine, which is a HP rating which has been adjusted to account for the characteristics of the location the engine is installed at as well as other parameters affecting the engine rating. For these reasons, we agree with the commenters that it is appropriate to use the site-rated HP as opposed to the manufacturer's nameplate rating for the size applicability criteria, because relying on the manufacturer's nameplate rating may not be representative of the capability of the engine on-site. This has been specified in the final rule.

Comment: Some commenters asked that EPA include non-aggregation provisions for transmission and storage facilities for the Transmission & Storage (T&S) MACT.

Response: We have incorporated this comment in the final rule. The non-aggregation provisions for transmission and storage facilities from the Natural Gas Transmission and Storage MACT (40 CFR part 63, subpart HHH), which are found in the definition of major source in that subpart, are as follows: (1) Emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control; and (2) emissions from processes, operations, and equipment that are not part of the same natural gas transmission and storage facility, as defined in this section, shall not be aggregated.

The non-aggregation provisions in (1) above were already included in the proposed definition of major source for the RICE NESHAP and have been retained in the final rule. The non-aggregation provisions in (2) above have also been added to the definition of major source for the RICE NESHAP.

Comment: Some commenters requested that EPA include the provisions to calculate potential emissions for storage facilities from the T&S MACT.

Response: We agree with the commenters and have incorporated their comment in the final rule by modifying the definition of potential to emit in the final rule to include the following: ''For oil and natural gas production facilities subject to subpart HH of this part, the potential to emit provisions in § 63.760(a) may be used. For natural gas transmission and storage facilities subject to subpart HHH of this part, the maximum annual facility gas throughput for storage facilities may be determined according to § 63.1270(a)(1) and the maximum annual throughput for transmission facilities may be may be determined according to § 63.1270(a)(2).''

Comment: Two commenters asked that EPA list diesel PM as a HAP. One of the commenters stated that if EPA fails to act on its own initiative, the commenter will submit a formal listing petition to EPA. One commenter recommended including diesel PM in this MACT and including limits and control measures.

Response: We acknowledge the comments on this issue. However, we are not prepared at this time to list

diesel PM as a regulated HAP, at least not in the context of the final rule. We proposed the rule for the purposes of promulgating regulations for emissions from stationary RICE that were already listed under section 112 of the CAA. While we did mention the diesel exhaust issue, we did not include any detailed discussion on the separate issue of whether any additional pollutants should be added to the list of regulated pollutants under CAA section 112. The decision regarding whether to list diesel PM entails several significant issues that have not been discussed in the context of the final rule. Therefore, it would be inappropriate to take final action on this comment in the context of the final rule.

V. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Quality Impacts?

The final rule will reduce total HAP emissions from stationary RICE by an estimated 5,600 tpy in the 5th year after the standards are implemented. We estimate that approximately 1,800 existing 4SRB stationary RICE will be affected by the final rule. In addition, we estimate that approximately 1,600 new 2SLB, 4SLB and 4SRB stationary RICE, and CI stationary RICE will be affected by the final rule each year for the next 5 years. At the end of the 5th year, it is estimated that 8,100 new stationary RICE will be subject to the final rule.

To estimate air impacts, HAP emissions from stationary RICE were estimated using average emission factors from the emissions database. It was also assumed that each stationary RICE is operated for 6,500 hours annually. The total national HAP emissions reductions are the sum of formaldehyde, acetaldehyde, acrolein, and methanol emissions reductions.

In addition to HAP emissions reductions, the final rule will reduce criteria pollutant emissions including CO, VOC, NO_X, and PM. The application of NSCR controls to 4SRB engines (the technology on which MACT for 4SRB engines is based) will also reduce NO_X emissions by 90 percent. It is possible that oxidation catalyst controls could be used to meet the 4SRB emission standards, but it is expected that the costs of controls will be similar for both systems. Assuming that 60 percent of the 4SRB (new and existing) engines that are covered by the emission standards will use NSCR, the emissions reductions of NO_X in the 5th year after promulgation are calculated to be about 167,900 tpy.

B. What Are the Cost Impacts?

A list of 26 model stationary RICE was developed to represent the range of existing stationary RICE. Information was obtained from catalyst vendors on equipment costs for oxidation catalyst and NSCR. This information was then used to estimate the costs of the final rule for each model stationary RICE following methodologies from the Office of Air Quality Planning and Standards (OAQPS) Control Cost Manual. These cost estimates for model stationary RICE were extrapolated to the national population of stationary RICE in the United States, and national impacts were determined.

The total national capital cost for the final rule for existing stationary RICE is estimated to be approximately $68 million, with a total national annual cost of $35 million in the 5th year. The total national capital cost for the final rule for new stationary RICE by the 5th year is estimated to be approximately $371 million, with a total national annual cost of $213 million in the 5th year.

C. What Are the Economic Impacts?

We prepared an economic impact analysis to evaluate the primary and secondary impacts the final rule would have on the producers and consumers of RICE, and society as a whole. The affected engines operate in over 30 different manufacturing markets, but a large portion are located in the oil and gas exploration industry, the oil and gas pipeline (transmission) industry, the mining and quarrying of non-metallic minerals industry, the chemicals and allied products industry, and the electricity and gas services industry. Taken together, these industries can have an influence on the price and demand for fuels used in the energy market (*i.e.*, petroleum, natural gas, electricity, and coal). Therefore, our analysis evaluates the impacts on each of the 30 different manufacturing markets affected by the final rule, as well as the combined effect on the market for energy. The total annualized social cost (in 1998 dollars) of the final rule is $248 million but this cost is spread across all 30 markets and the fuel markets. Overall, our analysis indicates a minimal change in prices and quantity produced in most of the fuel markets. The distribution of impacts on the fuel markets and the specific manufacturing market segments evaluated are summarized in Table 1 of this preamble.

TABLE 1.—ECONOMIC IMPACT OF FINAL RICE RULE ON AFFECTED MARKET SECTORS

Market sector	Change in price (percent)	Change in market output (percent)	Total social cost (millions of 1998$)
Fuel Markets: [1]			
Petroleum	0.015	−0.003	−$15.7
Natural Gas	0.300	−0.040	−102.5
Electricity	0.040	0.009	26.6
Coal	0.008	0.008	1.1
Subtotal			−90.4
Sectors of Energy Consumption:			
Commercial Sector			−161.6
Residential Sector			−98.9
Transportation Sector			−47.0
Mining and Quarrying	0.050	−0.001	−52.6
Food and Kindred Products	0.002	−0.002	−16.2
Paper and Allied Products	0.002	−0.003	−14.5
Chemicals and Allied Products	0.004	−0.006	−49.8
Primary Metals	0.004	−0.004	−18.9
Fabricated Metal Products	0.002	−0.000	5.0
Nonmetallic Mineral Products	0.005	−0.005	−9.9

TABLE 1.—ECONOMIC IMPACT OF FINAL RICE RULE ON AFFECTED MARKET SECTORS—Continued

Market sector	Change in price (percent)	Change in market output (percent)	Total social cost (millions of 1998$)
Other Manufacturing Markets	0.0–0.001	0.0–0.001	−53.8

[1] Only changes in producer surplus (*i.e.*, producer's share of regulatory costs) are reported for the Fuel Markets which represent the producers of energy. Sectors of energy consumption—commercial, residential, and transportation—have reported changes in consumer surplus only, and thus do not have reported changes in price and output. A combination of these costs will represent total social costs for the energy market in the economy.

Because a significant portion of the engines affected by the final rule use natural gas as a fuel source, it is not surprising to see the natural gas fuel market with the largest portion of the social costs. Although the natural gas market has a greater share of the regulatory burden, the overall impact on prices and output is about three-tenths of one percent, which is considered to be a minor economic impact on this industry. The change in the price of natural gas is not expected to influence the purchase decisions for new engines. Our analysis indicates that at most, five fewer engines out of over 20,000 engines will be purchased as a result of economic impacts associated with the final rule. The electricity and coal markets may experience a slight gain in revenues due to some fuel switching from natural gas to coal or electricity.

The total welfare loss for the manufacturing industries affected by the final rule is estimated to be approximately $103.0 million for consumers and $117.7 million for producers in the aggregate. In comparison to the energy expenditures of these industries (estimated to be $101.2 billion), the cost of the final rule to producers as a percentage of their fuel expenditures is 0.12 percent. For consumers, the total value of shipments for the affected industries is $3.95 trillion in 1998, so the cost to consumers as a percentage of spending on the outputs from these industries is nearly zero, or 0.003 percent.

The cost to residential consumers at $98.9 million is larger than for any individual manufacturing market, but less than the total consumer surplus losses in the manufacturing industries. In comparison, the social cost burden to residential consumers of fuel is 0.08 percent of residential energy expenditures ($98.9 million/$131.06 billion). The commercial sector of energy users also experiences a moderate portion of total social costs at an estimated $69.3 million. This amount is also larger than for any individual manufacturing sector, but is an aggregate across all commercial NAICS codes. As a percentage of fuel expenditures by this sector of fuel consumers, the regulatory burden is 0.07 percent ($69.3 million/$96.86 billion). The cost to transportation consumers is estimated to be $47.0 million. This cost represents 0.02 percent ($47.0 million/$188.13 billion) of energy expenditures for the transportation sector.

Therefore, giving consideration to the minimal changes in prices and output in nearly all markets, and the fact that the regulatory costs that are shared by commercial, residential, and transportation users of fuel energy are a small fraction of typical energy expenditures in these sectors each year, we conclude that the economic impacts of the final rule will not be significant to any one sector of the economy.

The economic analysis described above assumed that all existing 4SRB engines and all new engines were located at major HAP emission sources and are required to install controls. However, as stated previously, we anticipate that at least 60 percent of the stationary RICE will be located at area sources which are not affected by the final rule. Therefore, the economic impacts described above would be reduced.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

We do not expect any significant wastewater, solid waste, or energy impacts resulting from the final rule. Energy impacts associated with the final rule would be due to additional energy consumption that the final rule would require by installing and operating control equipment. The only energy requirement for the operation of the control technologies is a very small increase in fuel consumption resulting from back pressure caused by the emission control system.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the final rule is a ''significant regulatory action'' because it could have an annual effect on the economy of over $100 million. Consequently, this action was submitted to OMB for review under Executive Order 12866. Any written comments from OMB and written EPA responses are available in the docket.

As stipulated in Executive Order 12866, in deciding how or whether to regulate, EPA is required to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. To this end, EPA prepared a detailed benefit-cost analysis in the ''Regulatory Impact Analysis of the Reciprocating Internal Combustion Engines NESHAP,'' which is contained in the docket. The following is a summary of the benefit-cost analysis.

It is estimated that 5 years after implementation of the final rule, HAP will be reduced by 5,600 tpy due to reductions in formaldehyde, acetaldehyde, acrolein, methanol, and several other HAP from some existing and all new internal combustion engines. Formaldehyde and acetaldehyde have been classified as

''probable human carcinogens'' based on scientific studies conducted over the past 20 years. These studies have determined a relationship between exposure to these HAP and the onset of cancer; however, there are some questions remaining on how cancers that may result from exposure to these HAP can be quantified in terms of dollars. Acrolein, methanol and the other HAP emitted from RICE sources are not considered carcinogenic but have been reported to cause several noncarcinogenic effects.

The control technology to reduce the level of HAP emitted from RICE are also expected to reduce emissions of criteria pollutants, primarily CO, NO_X, and PM, however, VOC are also reduced to a minor extent. It is estimated that CO emissions reductions totals approximately 234,400 tpy, NO_X emissions reductions totals approximately 167,900 tpy, and PM emissions reductions totals approximately 3,700 tpy. These reductions occur from new and existing engines in operation 5 years after the implementation of the rule and are expected to continue throughout the life of the engines and continue to grow as new engines (that otherwise would not be controlled) are purchased for operation.

Human health effects associated with exposure to CO include cardiovascular system and CNS effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. Emissions of NO_X can transform into PM in the atmosphere, which produces a variety of health and welfare effects. In general, exposure to high concentrations of $PM_{2.5}$ may aggravate existing respiratory and cardiovascular disease including asthma, bronchitis and emphysema, especially in children and the elderly. Nitrogen oxides are also a contributor to acid deposition, or acid rain, which causes acidification of lakes and streams and can damage trees, crops, historic buildings and statues. Exposure to $PM_{2.5}$ can lead to decreased lung function, and alterations in lung tissue and structure and in respiratory tract defense mechanisms which may then lead to increased respiratory symptoms and disease, or in more severe cases, premature death or increased hospital admissions and emergency room visits. Children, the elderly, and people with cardiopulmonary disease, such as asthma, are most at risk from these health effects. Fine PM can also form a haze that reduces the visibility of scenic areas, can cause acidification of water bodies, and have other impacts on soil, plants, and materials. As NO_X emissions transform into PM, they can lead to the same health and welfare effects listed above.

At the present time, the Agency cannot provide a monetary estimate for the benefits associated with the reductions in CO. For NO_X and PM, we conducted an air quality assessment to determine the change in concentrations of PM that result from reductions of NO_X and direct emissions of PM at all sources of RICE. Because we are unable to identify the location of all affected existing and new sources of RICE, our analysis is conducted in two phases. In the first phase, we conduct an air quality analysis assuming a 50 percent reduction of 1996-levels of NO_X emissions and a 100 percent reduction of PM_{10} emissions for all RICE sources throughout the country. The results of this analysis serve as a reasonable approximation of air quality changes to transfer to the final rule's emissions reductions at affected sources. The results of the air quality assessment served as input to a model that estimates the benefits related to the health effects listed above. In the second phase of our analysis, the value of the benefits per ton of NO_X and PM reduced (*e.g.*, $ benefit/ton reduced) associated with the air quality scenarios are then applied to the tons of NO_X and PM emissions expected to be reduced by the final rule. We also used the benefit transfer method to value improvements in ozone based on the transfer of benefit values from an analysis of the 1998 NO_X SIP call. In addition, although the benefits of the welfare effects of NO_X are monetized in other Agency analyses, we chose not to do an analysis of the improvements in welfare effects that will result from the final rule. Alternatively, we could transfer the estimates of welfare benefits from these other studies to this analysis, but chose not to do so because these studies with estimated welfare benefits differ in the source and location of emissions and associated impacted populations.

The benefit estimates derived from the air quality modeling in the first phase of our analysis uses an analytical structure and sequence similar to that used in the benefits analyses for the proposed Nonroad Diesel rule and proposed Integrated Air Quality Rule (IAQR) and in the ''section 812 studies'' analysis of the total benefits and costs of the CAA. We used many of the same models and assumptions used in the Nonroad Diesel and IAQR analyses as well as other Regulatory Impact Analyses (RIA) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIA, we have largely relied on methods which have already received extensive review by the independent Science Advisory Board (SAB), the National Academies of Sciences, by the public, and by other Federal agencies.

The benefits transfer method used in the second phase of the analysis is similar to that used to estimate benefits at the proposal of the rule, and in the proposed Industrial Boilers and Process Heaters NESHAP. A similar method has also been used in recent benefits analyses for the proposed Nonroad Large Spark-Ignition Engines and Recreational Engines rule (67 FR 68241, November 8, 2002).

The sum of benefits from the two phases of analysis and the ozone benefit transfer estimate provide an estimate of the total benefits of the final rule. Total benefits of the final rule are approximately $280 million (1998$).

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited, to some extent, by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes that can be quantified. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of today's action are the following:

(1) The exclusion of potentially significant benefit categories (*e.g.*, health and ecological benefits of reduction in HAP emissions);

(2) Errors in measurement and projection for variables such as population growth;

(3) Uncertainties in the estimation of future year emissions inventories and air quality;

(4) Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on the affected population;

(5) Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations; and

(6) Uncertainties associated with the benefit transfer approach.

Despite these uncertainties, we have determined that the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the final rule under a given set of assumptions.

In addition to the presentation of quantified health benefits, our estimate also includes a ''B'' to represent those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full appreciation of the overall economic consequences of the RICE NESHAP requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs which could be expressed here in dollar terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table 2 of this preamble.

TABLE 2.—UNQUANTIFIED BENEFIT CATEGORIES FROM RICE EMISSIONS REDUCTIONS

	Unquantified benefit categories associated with HAP	Unquantified benefit categories associated with Ozone	Unquantified benefit categories associated with PM
Health Categories	Carcinogenicity mortality; Genotoxicity mortality; Non-Cancer lethaity; Pulmonary function decrement; Dermal irritation; Eye irritation; Neurotoxicity; Immunotoxicity; Pulmonary function decrement; Liver damage; Gastrointestinal toxicity; Kidney damage; Cardiovascular impairment; Hematopoietic; (Blood disorders); Reproductive/Developmental toxicity.	Airway responsiveness; Pulmonary inflammation; Increased susceptibility to respiratory infection; Acute inflammation and respiratory cell damage; Chronic respiratory damage/Premature aging of lungs; Emergency room visits for asthma.	Changes in pulmonary function; Morphological changes; Altered host defense mechanisms; Cancer; Other chronic respiratory disease; Emergency room visits for asthma; Lower and upper respiratory symptoms; Acute bronchitis; Shortness of breath.
Welfare Categories	Corrosion/Deterioration; Unpleasant odors; Transportation safety concerns; Yield reductions/Foliar injury; Biomass decrease; Species richness decline; Species richness decline; Species diversity decline; Community size decrease; Organism lifespan decrease; Trophic web shortening.	Ecosystem and vegetation effects in Class I areas (*e.g.*, national parks); Damage to urban ornamentals (*e.g.*, grass, flowers, shrubs, and trees in urban areas); Commercial field crops; Fruit and vegetable crops; Reduced yields of tree seedlings, commercial and non-commercial forests; Damage to ecosystems, Materials damage.	Materials change; Damage to ecosystems (*e.g.*, acid sulfate deposition); Nitrates in drinking water.

Benefit-cost comparison (or net benefits) is another tool used to evaluate the reallocation of society's resources needed to address the pollution externality created by the operation of RICE units. The additional costs of internalizing the pollution produced at major sources of emissions from RICE units is compared to the improvement in society's well-being from a cleaner and healthier environment. Comparing benefits of the final rule to the costs imposed by alternative ways to control emissions optimally identifies a strategy that results in the highest net benefit to society. In the case of the RICE NESHAP, we are specifying only one option, the minimal level of control mandated by the CAA, or the MACT floor.

Based on estimated compliance costs (control + administrative costs associated with Paperwork Reduction Act requirements associated with the final rule and predicted changes in the price and output of electricity and other affected products), the estimated social costs of the RICE NESHAP are $248 million (1998$). Social costs are different from compliance costs in that social costs take into account the interactions between affected producers and the consumers of affected products in response to the imposition of the compliance costs.

As explained above, we estimate $280 million in benefits from the final rule, compared to $248 million in costs. Thus, the total benefits (associated with NO_X and PM reductions) exceed the estimated total costs of the final rule by $30 million + B. It is important to put the results of this analysis in the proper context. The large benefit estimate is not attributable to reducing human and environmental exposure to the HAP that are reduced by the final rule. It arises from ancillary reductions in PM and NO_X that result from controls aimed at complying with the NESHAP. Although consideration of ancillary benefits is reasonable, we note that these benefits are not uniquely attributable to the regulation. The Agency has determined that the key rationale for controlling formaldehyde, acetaldehyde, acrolein, methanol, and the other HAP associated with the final rule is to reduce public and environmental exposure to these HAP, thereby reducing risk to public health and wildlife. Although the available science does not support quantification of these benefits at this time, the Agency has determined that the qualitative benefits are large enough to justify substantial investment in these emissions reductions.

It should be recognized, however, that this analysis does not account for many of the potential benefits that may result from these actions. The net benefits would be greater if all the benefits of the other pollutant reductions could be quantified. Notable omissions to the net benefits include all benefits of HAP reductions, including reduced cancer incidences, toxic morbidity effects, and cardiovascular and CNS effects, and all welfare effects from reduction of ambient PM and SO_2.

Table 3 presents a summary of the costs, emission reductions, and quantifiable benefits by engine type. Table 4 presents a summary of net benefits. Approximately 90 percent of the total benefits ($255 million + B) are associated with NO_X reductions from the 4SRB subcategory for new and existing engines. Approximately 10 percent of the total benefits ($25 million + B) are associated with the PM reductions from the compression ignition engine subcategory at new sources.

In both cases, net benefits would be greater if all the benefits of the HAP and

other pollutant reductions could be quantified. Notable omissions to the net benefits include all benefits of HAP and CO reductions, including reduced cancer incidences, toxic morbidity effects, and cardiovascular and CNS effects. It is also important to note that not all benefits of NO_X reductions have been monetized. Categories which have contributed significantly to monetized benefits in past analyses (see the RIA for the Heavy Duty Engine/Diesel standards) include commercial agriculture and forestry, recreational and residential visibility improvements, and estuarine improvements.

TABLE 3.—SUMMARY OF COSTS, EMISSION REDUCTIONS, AND QUANTIFIABLE BENEFITS BY ENGINE TYPE

Type of engine	Total annualized cost (million $/yr in 2005)	Emission reductions [1] (tons/yr in 2005)				Quantifiable annual monetized benefits [2] (million) $/yr in 2005)
		HAP	CO	NO_X	PM	
2SLB—New	$3	250	2,025	0	0	B_1
4SLB—New	64	4,035	36,240	0	0	B_3
4SRB—Existing	37	230	98,040	69,900	0	$105 + B_5
4SRB—New	47	215	91,820	98,000	0	150 + B_9
CI—New	96	305	6,320	0	3,700	25 + B_{13}
Total	248	5,035	234,445	167,900	3,700	$280 + B

[1] All benefits values are rounded to the nearest $5 million.
[2] Benefits of HAP and CO emissions reductions are not quantified in this analysis and, therefore, are not presented in this table. The quantifiable benefits are from emission reductions of NO_X and PM only. For notational purposes, unquantified benefits are indicated with a "B" to represent monetary benefits. A detailed listing of unquantified NO_X, PM, and HAP related health effects is provided in Table 2 of this preamble.

TABLE 4.—ANNUAL NET BENEFITS OF THE RICE NESHAP IN 2005

	Million 1998$ [1]
Social Costs [2]	$250
Social Benefits [2 3]:	
HAP-related benefits	Not monetized
CO-related benefits	Not monetized
Ozone- and PM-related Welfare benefits	Not monetized
Ozone- and PM-related Health benefits	$280 + B
Net Benefits (Benefits-Costs)[3]	$30 + B

[1] All costs and benefits are rounded to the nearest $5 million.
[2] Note that costs are the total costs of reducing all pollutants, including HAP and CO, as well as NO_X and PM_{10}. Benefits in this table are associated only with PM and NO_X reductions.
[3] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table 2 of this preamble. B is the sum of all unquantified benefits and disbenefits.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The final rule will require maintenance inspections of the control devices but will not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 141,984 labor hours per year at a total annual cost of $11,377,592. This estimate includes a one-time performance test, semiannual excess emission reports, maintenance inspections, notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the information collection request (ICR) are estimated at $5,302,416 (an average of $1,767,472 per year), with operation and maintenance costs of $1,206,212/yr.

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

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

amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

We have determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule.

For purposes of assessing the impacts of the final rule on small entities, ''small entity'' is defined as: (1) A small business whose parent company has fewer than 500 employees (for most affected industries); (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that the final rule covers more than 25 different industries. For each industry, we applied the definition of a small business provided by the Small Business Administration (SBA) at 13 CFR 121, classified by the NAICS. The SBA defines small businesses in most industries affected by the final rule as those with fewer than 500 employees. However, SBA has defined ''small business'' differently for a limited number of industries, either through reference to another employment cap or through the substitution of total yearly revenues in place of an employment limit. For more information on the size standards for particular industries, please refer to the regulatory impact analysis in the docket.

After considering the economic impacts of today's final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. In support of this conclusion, we examined the percentage of annual revenues that compliance costs may consume if small entities must absorb all of the compliance costs associated with the final rule. Since many firms will be able to pass along some or all compliance costs to customers, actual impacts to affected firms will frequently be lower than those analyzed here.

As is mentioned in section II.A of this preamble, the final rule will set standards for new and existing 4SRB units. We identified a total of 26,832 existing engines located at commercial, industrial, and government facilities. From this initial population of 26,832 engines, 10,118 engines were excluded because the final rule will not cover engines 500 brake HP or less, emergency, or limited use engines. Of the 16,714 units remaining, 2,645 units had sufficient information to assign to model unit numbers developed during the cost analysis. These 2,645 units were linked to 834 existing facilities, owned by 153 parent companies. Sales and employment information was unavailable for 12 of the 153 parent companies. A total of 47 companies linked to engines with sufficient information to be included in the cost analysis were identified as small entities, and 13 of them own 4SRB engines. These small entities own a total of 39 4SRB units at 21 facilities.

Based on a technical support document in the docket (Docket ID Nos. OAR–2002–0059 and A–95–35) discussing the distribution of major and area sources of RICE units, we anticipate that about 60 percent of existing and future stationary RICE units will be located at area sources. This is because most RICE engines or groups of RICE engines are not major sources of HAP emissions by themselves, but may be major because they are co-located at major HAP sites. Because area sources are not covered by the NESHAP, engines located at area sources will not incur any compliance costs associated with the RICE NESHAP. Thus, 40 percent of the existing 4SRB engines that are above 500 HP and are not backup/emergency units (the only existing engines that receive costs under the rule) and 40 percent of all new RICE projected to be added in the future (above 500 HP that are not backup/emergency units) are expected to be subject to today's action. Based on this assumption, about 16 of the 39 4SRB units identified at facilities owned by small businesses would be located at major sources.

In applying the compliance costs to our modeling for generating economic impact and small business analyses, we calculate impacts (as mentioned in Section 6 of the economic impact analysis) presuming that all 39 4SRB engines are located at major sources and hence will bear compliance costs associated with this action. We make this presumption because it is highly uncertain which facilities are major sources and which are area sources. Thus, we assume a worst case scenario that all existing 4SRB owned by small businesses are located at major sources and subject to the rule to provide a conservative or high estimate of the small business impacts. This is called an ''upper bound cost scenario'' because only 40 percent and not 100 percent of all RICE units are estimated to be at major sources, and therefore subject to the rule. It is reasonable to expect that the percentage of facilities owned by small businesses that are major sources would be lower than the average for the whole source category, so even fewer existing 4SRB owned by small businesses may be affected.

Under the upper bound cost scenario, there are no small firms that have compliance costs above 3 percent of firm revenues and two small firms owning 4SRB engines that have impacts between 1 and 3 percent of revenues. In addition to 12 small firms with 4SRB engines, there is one small government in the population database affected by the final rule. The costs to this city are approximately $3 per capita annually assuming their engine is affected by the final rule, less than 0.01 percent of median household income.

Based on this subset of the existing engines population, the final rule will not affect small entities owning RICE at a cost to sales ratio (CSR) greater than 3 percent, while potentially up to 15 percent (2/13) of those small entities owning RICE greater than 500 HP will have compliance costs between 1 and 3 percent of sales under an upper bound cost scenario.

Assuming the same breakdown of large and small company ownership of engines in the total population of existing engines as in the subset with parent company information identified, the Agency expects that approximately 82 ($13 \times 16{,}714/2{,}645$) small entities in the existing population of RICE owners would have CSR between 1 and 3 percent under the upper bound cost scenario described earlier in this preamble section.

In addition, because many small entities owning RICE will not be affected because of the exclusion of engines 500 brake HP or less, the percentage of all small companies owning RICE that are affected by the final rule is even smaller. Based on the proportion of engines in the population database that are greater than 500 brake HP and are not backup units (16,714/26,832, or 62.3 percent) and assuming that small companies own the same proportion of small engines (500 brake HP or less) as they do of engines greater than 500 brake HP, the Agency estimates that 628 small companies own RICE. Of all small companies owning RICE, 13 percent (82/628) are expected to have CSR between 1 and 3 percent under the upper bound cost scenario described earlier in this preamble section and in the economic impact analysis report. If the percentage of RICE owned by small companies that are located at major sources is the same as the engine population overall (40 percent), about 5 percent of small

companies owning RICE would be expected to have CSR greater than 1 percent.

The median profit margin for the industries in our analysis is approximately 2 to 7 percent. Therefore, based on this median profit margin data, it seems reasonable to consider the number of small firms with CSR above 3 percent in screening for significant economic impacts on small businesses.

This screening analysis shows that none of the small entities in the population database have impacts greater than 3 percent and two small firms that we were able to analyze with the available data have impacts between 1 and 3 percent even under the upper bound cost scenario described earlier in this preamble section and in the economic impact analysis report.

Section II.A also states that new 4SRB engines will be affected by today's action. For new sources, it can be reasonably assumed that the investment decision to purchase a new engine may be slightly altered as a result of the final rule. In fact, as shown in section 6 of the economic impact analysis, for the entire population of affected engines (approximately 20,000 new engines over a 5-year period), 2 fewer engines (0.01 percent) may be purchased due to changes in costs of the engines and market responses to the final rule. It is not possible, however, to determine future investment decisions by the small entities in the affected industries, so we cannot link these 2 engines to any one firm (small or large). Overall, it is very unlikely that a substantial number of small firms who may consider purchasing a new engine will be significantly impacted, because the decision to purchase new engines is not altered to a large extent. In addition to this consideration of costs on some firms attributable to the final rule, we note the final rule is likely to increase revenues for many small firms, including those not regulated by the final rule, due to a predictable increase in prices of natural gas in the industry. An increase in natural gas prices is expected since the compliance costs of today's action will lead to market adjustments such as decreased output, thereby leading to increased prices. Concurrent with this increase in natural gas prices will be some increase in revenues for those small firms in affected industries that are not subject to this action, for they experience revenues due to the increased natural gas prices without bearing any of the compliance costs.

Although the final rule will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of the final rule on small entities. In the final rule, we are applying the minimum level of control allowed by the CAA (*i.e.*, the MACT floor), and the minimum level of monitoring, recordkeeping, and reporting by affected sources. In addition, as mentioned in section II of the preamble, new RICE units with capacities 500 brake HP or less and those that operate as emergency and limited use units are not covered by the final rule, provisions that should greatly reduce the level of small entity impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule contains a Federal mandate that will result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have prepared a written statement under section 202 of the UMRA which is summarized below. The written statement is in the docket.

Statutory Authority

As discussed previously in this preamble, the statutory authority for the final rule is section 112 of the CAA. Section 112(b) lists the 189 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

Section 112(d) of the CAA directs us to develop NESHAP based on MACT which require existing and new major sources to control emissions of HAP. These NESHAP apply to all stationary RICE located at major sources of HAP emissions, however, only certain existing and new or reconstructed stationary RICE have substantive regulatory requirements.

In compliance with section 205(a), we identified and considered a reasonable number of regulatory alternatives. The regulatory alternative upon which the rule is based represents the MACT floor for stationary RICE and, as a result, it is the least costly and least burdensome alternative.

Social Costs and Benefits

The RIA prepared for the final rule, including the Agency's assessment of costs and benefits, is detailed in the ''Regulatory Impact Analysis for the Final RICE NESHAP'' in the docket. Based on estimated compliance costs on all sources associated with the final rule and the predicted change in prices and production in the affected industries, the estimated social costs of the final rule are $248 million (1998$).

It is estimated that 5 years after implementation of the final rule, HAP will be reduced by 5,600 tpy due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from existing and new stationary RICE. Formaldehyde and acetaldehyde have been classified as ''probable human carcinogens.'' Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. The final rule will also achieve reductions in 234,400 tons of CO, approximately 167,900 tons of NO_X per year, and approximately 3,700 tons of PM per year. Exposure to CO can effect the cardiovascular system and the central nervous system. Emissions of NO_X can transform into PM, which can result in fatalities and many respiratory problems

(such as asthma or bronchitis); and NO_X can also transform into ozone causing several respiratory problems to affected populations.

At the present time, the Agency cannot provide a monetary estimate for the benefits associated with the reductions in HAP and CO. For NO_X and PM, we estimated the benefits associated with health effects of PM directly and secondary PM that is formed from NO_X, but were unable to quantify all categories of benefits of NO_X (particularly those associated with ecosystem and environmental effects). Unquantified benefits are noted with ''B'' in the estimates presented below. Total monetized benefits are approximately $280 million + B (1998$). These monetized benefits should be considered along with the many categories of benefits that we are unable to place a dollar value on to consider the total benefits of the final rule.

Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the rule and any disproportionate budgetary effects. Our estimates of the future compliance costs of the final rule are discussed previously in this preamble.

We do not feel that there will be any disproportionate budgetary effects of the final rule on any particular areas of the country, State or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments.

Effects on the National Economy

The UMRA requires that we estimate the effect of the final rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of the final rule is presented in the ''Regulatory Impact Analysis for RICE NESHAP'' in the docket. This analysis provides estimates of the effect of the final rule on most of the categories mentioned above. The results of the economic impact analysis are summarized previously in this preamble.

Consultation With Government Officials

The UMRA requires that we describe the extent of our prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns. In addition, section 203 of UMRA requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Although the final rule does not affect any State, local, or tribal governments, we have consulted with State and local air pollution control officials. We also have held meetings on the final rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the docket to document these meetings.

In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us 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'' are 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.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule primarily affects private industry, and does not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although not required by Executive Order 13132, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the final rule. This consultation took place during the ICCR committee meetings where members representing State and local governments participated in developing recommendations for EPA's combustion-related rules, including the final rule. The concerns raised by representatives of State and local governments were considered during the development of the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for this determination is provided below.

The Regulatory Impact Analysis (RIA) estimates changes in prices and production levels for all energy markets (*i.e.*, petroleum, natural gas, electricity, and coal). We also estimate how changes in the energy markets will impact other users of energy, such as manufacturing markets and residential, industrial and commercial consumers of energy. The results of the economic impact analysis for the final rule are shown for 2005, for this is the year in which full implementation of the final rule is expected to occur. These results show that there will be minimal changes in price, if any, for most energy products affected by implementation of the final rule. Only a slight price increase (about 0.008 percent to 0.04 percent) may occur in three of the energy sectors: Petroleum, electricity, and coal products nationwide; and approximately a three-tenths of one percent (*i.e.*, 0.30 percent) change in natural gas prices. The change in energy costs associated with the final rule, however, represents only 0.08 percent of expected annual energy expenditures by residential consumers in 2005, a 0.02 percent change for transportation consumers of energy, and about 0.07 percent of energy expenditures in the commercial sector. In addition, no discernable impact on exports or imports of energy products is expected. Therefore, the impacts on energy markets and users will be relatively small nationwide as a result of implementation of the final rule. In addition, as is discussed in previous sections of this preamble, the economic analysis for RICE assumed that all existing 4SRB engines and all new engines were located at major HAP emission sources and are required to install controls. However, we anticipate that at least 60 percent of the stationary RICE will be located at area sources which are not affected by the final rule. Therefore, the economic impacts on the energy sector as described above would be reduced.

Therefore, we conclude that the final rule when implemented will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following methods in the final rule: EPA Methods 1, 1A, 3A, 3B, 4, 10 of 40 CFR part 60, appendix A; EPA Methods 320 and 323 of 40 CFR part 63, appendix A; and PS 3, and PS 4A, of 40 CFR part 60, appendix B. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 1A, PS 3, and PS 4A. The search and review results have been documented and are placed in the docket (Docket ID Nos. OAR–2002–0059 and A–95–35) for the final rule.

Two voluntary consensus standards were identified as acceptable alternatives to the EPA methods specified in the final rule. One voluntary consensus standard, ASTM D6522–00 ''Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers,'' is cited in the final rule as an acceptable alternative to EPA Methods 3A and 10 for identifying carbon monoxide and oxygen concentrations for the final rule when the fuel is natural gas.

The voluntary consensus standard ASTM D6348–03, ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy,'' is an acceptable alternative to EPA Method 320 for formaldehyde measurement provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.

In addition to the voluntary consensus standards EPA uses in the final rule, the search for emissions measurement procedures identified six other voluntary consensus standards. The EPA determined that five of these six standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods/performance specifications for the purposes of the final rule. Therefore, the EPA does not intend to adopt these standards. The reasons for the determinations of these five methods are discussed below.

The voluntary consensus standard ASTM D3154–00, ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' is impractical as an alternative to EPA Methods 1, 3B, and 4 for the purposes of the final rule since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The voluntary consensus standard, CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics. The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods requires drift checks after each run.

Two very similar standards, ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' and ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' are impractical alternatives to EPA Method 3A for the purposes of the final rule because they

lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders, in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

The voluntary consensus standard ISO 12039:2001, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' is not acceptable as an alternative to EPA Method 3A. This ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a 3-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests as in the EPA method, although checks of these quality control features are required by the ISO standard.

One of the six voluntary consensus standards identified in this search, ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse'' (for EPA Method 2 and possibly 1), was not available at the time the review was conducted for the purposes of the final rule because it was under development by a voluntary consensus body.

Tables 4, 5, and 6 to 40 CFR part 60, subpart ZZZZ, list the EPA testing methods included in the final rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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. The EPA will submit a report containing today's final 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 action is a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on August 16, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 26, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (b)(27) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(27) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 63.9307(c)(2) and Table 4 to Subpart ZZZZ of part 63.

* * * * *

■ 3. Part 63 is amended by adding subpart ZZZZ to read as follows:

Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

Sec.

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Table 2b to Subpart ZZZZ of Part 63—Operating Limitations for New and Reconstructed Lean Burn and Compression Ignition Stationary RICE
Table 3 to Subpart ZZZZ of Part 63—Subsequent Performance Tests

Table 4 to Subpart ZZZZ of Part 63—Requirements for Performance Tests
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Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

What This Subpart Covers

§ 63.6580 What is the purpose of subpart ZZZZ?

Subpart ZZZZ establishes national emission limitations and operating limitations for hazardous air pollutants (HAP) emitted from stationary reciprocating internal combustion engines (RICE) located at major sources of HAP emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations.

§ 63.6585 Am I subject to this subpart?

You are subject to this subpart if you own or operate a stationary RICE at a major source of HAP emissions, except if the stationary RICE is being tested at a stationary RICE test cell/stand.

(a) A stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. Stationary RICE differ from mobile RICE in that a stationary RICE is not a non-road engine as defined at 40 CFR 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition.

(b) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year, except that for oil and gas production facilities, a major source of HAP emissions is determined for each surface site.

§ 63.6590 What parts of my plant does this subpart cover?

This subpart applies to each affected source.

(a) *Affected source.* An affected source is any existing, new, or reconstructed stationary RICE with a site-rating of more than 500 brake horsepower located at a major source of HAP emissions, excluding stationary RICE being tested at a stationary RICE test cell/stand.

(1) *Existing stationary RICE.* A stationary RICE is existing if you commenced construction or reconstruction of the stationary RICE before December 19, 2002. A change in ownership of an existing stationary RICE does not make that stationary RICE a new or reconstructed stationary RICE.

(2) *New stationary RICE.* A stationary RICE is new if you commenced construction of the stationary RICE on or after December 19, 2002.

(3) *Reconstructed stationary RICE.* A stationary RICE is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced on or after December 19, 2002.

(b) *Stationary RICE subject to limited requirements.* (1) An affected source which meets either of the criteria in paragraph (b)(1)(i) through (ii) of this section does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.6645(d).

(i) The stationary RICE is a new or reconstructed emergency stationary RICE; or

(ii) The stationary RICE is a new or reconstructed limited use stationary RICE.

(2) A new or reconstructed stationary RICE which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis must meet the initial notification requirements of § 63.6645(d) and the requirements of §§ 63.6625(c), 63.6650(g), and 63.6655(c). These stationary RICE do not have to meet the emission limitations and operating limitations of this subpart.

(3) A stationary RICE which is an existing spark ignition 2 stroke lean burn (2SLB) stationary RICE, an existing spark ignition 4 stroke lean burn (4SLB) stationary RICE, an existing compression ignition (CI) stationary RICE, an existing emergency stationary RICE, an existing limited use stationary RICE, or an existing stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, does not have to meet the requirements of this subpart and of subpart A of this part. No initial notification is necessary.

§ 63.6595 When do I have to comply with this subpart?

(a) *Affected sources.* (1) If you have an existing stationary RICE, you must comply with the applicable emission limitations and operating limitations no later than June 15, 2007.

(2) If you start up your new or reconstructed stationary RICE before August 16, 2004, you must comply with the applicable emission limitations and operating limitations in this subpart no later than August 16, 2004.

(3) If you start up your new or reconstructed stationary RICE after August 16, 2004, you must comply with the applicable emission limitations and operating limitations in this subpart upon startup of your affected source.

(b) *Area sources that become major sources.* If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the compliance dates in paragraphs (b)(1) and (2) of this section apply to you.

(1) Any stationary RICE for which construction or reconstruction is commenced after the date when your area source becomes a major source of HAP must be in compliance with this subpart upon startup of your affected source.

(2) Any stationary RICE for which construction or reconstruction is commenced before your area source becomes a major source of HAP must be in compliance with this subpart within 3 years after your area source becomes a major source of HAP.

(c) If you own or operate an affected source, you must meet the applicable notification requirements in § 63.6645 and in 40 CFR part 63, subpart A.

Emission and Operating Limitations

§ 63.6600 What emission limitations and operating limitations must I meet?

(a) If you own or operate an existing, new, or reconstructed spark ignition 4 stroke rich burn (4SRB) stationary RICE located at a major source of HAP emissions, you must comply with the emission limitations in Table 1a of this subpart and the operating limitations in Table 1b of this subpart which apply to you.

(b) If you own or operate a new or reconstructed 2SLB or 4SLB stationary RICE or a new or reconstructed CI stationary RICE located at a major source of HAP emissions, you must comply with the emission limitations in Table 2a of this subpart and the operating limitations in Table 2b of this subpart which apply to you.

(c) If you own or operate: An existing 2SLB stationary RICE, an existing 4SLB stationary RICE, or an existing CI stationary RICE; a stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis; an emergency stationary RICE; or a limited use stationary RICE, you do not need to

comply with the emission limitations in Tables 1a and 2a of this subpart or operating limitations in Tables 1b and 2b of this subpart.

General Compliance Requirements

§ 63.6605 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operating limitations in this subpart that apply to you at all times, except during periods of startup, shutdown, and malfunction.

(b) If you must comply with emission limitations and operating limitations, you must operate and maintain your stationary RICE, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at all times, including during startup, shutdown, and malfunction.

Testing and Initial Compliance Requirements

§ 63.6610 By what date must I conduct the initial performance tests or other initial compliance demonstrations?

(a) You must conduct the initial performance test or other initial compliance demonstrations in Table 4 of this subpart that apply to you within 180 days after the compliance date that is specified for your stationary RICE in § 63.6595 and according to the provisions in § 63.7(a)(2).

(b) If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you must demonstrate initial compliance with either the proposed emission limitations or the promulgated emission limitations no later than February 10, 2005 or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(c) If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, and you chose to comply with the proposed emission limitations when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limitations by December 13, 2007 or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) An owner or operator is not required to conduct an initial performance test on units for which a performance test has been previously conducted, but the test must meet all of the conditions described in paragraphs (d)(1) through (5) of this section.

(1) The test must have been conducted using the same methods specified in this subpart, and these methods must have been followed correctly.

(2) The test must not be older than 2 years.

(3) The test must be reviewed and accepted by the Administrator.

(4) Either no process or equipment changes must have been made since the test was performed, or the owner or operator must be able to demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process or equipment changes.

(5) The test must be conducted at any load condition within plus or minus 10 percent of 100 percent load.

§ 63.6615 When must I conduct subsequent performance tests?

If you must comply with the emission limitations and operating limitations, you must conduct subsequent performance tests as specified in Table 3 of this subpart.

§ 63.6620 What performance tests and other procedures must I use?

(a) You must conduct each performance test in Tables 3 and 4 of this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 4. The test must be conducted at any load condition within plus or minus 10 percent of 100 percent load.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e)(1) You must use Equation 1 of this section to determine compliance with the percent reduction requirement:

$$\frac{C_i - C_o}{C_i} \times 100 = R \qquad \text{(Eq. 1)}$$

Where:

C_i = concentration of CO or formaldehyde at the control device inlet,

C_o = concentration of CO or formaldehyde at the control device outlet, and

R = percent reduction of CO or formaldehyde emissions.

(2) You must normalize the carbon monoxide (CO) or formaldehyde concentrations at the inlet and outlet of the control device to a dry basis and to 15 percent oxygen, or an equivalent percent carbon dioxide (CO_2). If pollutant concentrations are to be corrected to 15 percent oxygen and CO_2 concentration is measured in lieu of oxygen concentration measurement, a CO_2 correction factor is needed. Calculate the CO_2 correction factor as described in paragraphs (e)(2)(i) through (iii) of this section.

(i) Calculate the fuel-specific F_o value for the fuel burned during the test using values obtained from Method 19, section 5.2, and the following equation:

$$F_o = \frac{0.209\ F_d}{F_c} \qquad \text{(Eq. 2)}$$

Where:

F_o = Fuel factor based on the ratio of oxygen volume to the ultimate CO_2 volume produced by the fuel at zero percent excess air.

0.209 = Fraction of air that is oxygen, percent/100.

F_d = Ratio of the volume of dry effluent gas to the gross calorific value of the fuel from Method 19, dsm^3/J ($dscf/10^6$ Btu).

F_c = Ratio of the volume of CO_2 produced to the gross calorific value of the fuel from Method 19, dsm^3/J ($dscf/10^6$ Btu).

(ii) Calculate the CO_2 correction factor for correcting measurement data to 15 percent oxygen, as follows:

$$X_{co_2} = \frac{5.9}{F_o} \qquad \text{(Eq. 3)}$$

Where:

X_{co2} = CO_2 correction factor, percent.

5.9 = 20.9 percent O_2 − 15 percent O_2, the defined O_2 correction value, percent.

(iii) Calculate the NO_X and SO_2 gas concentrations adjusted to 15 percent O_2 using CO_2 as follows:

$$C_{adj} = C_d \frac{X_{co_2}}{\%CO_2} \qquad \text{(Eq. 4)}$$

Where:

$\%CO_2$ = Measured CO_2 concentration measured, dry basis, percent.

(f) If you comply with the emission limitation to reduce CO and you are not using an oxidation catalyst, if you comply with the emission limitation to reduce formaldehyde and you are not using NSCR, or if you comply with the emission limitation to limit the concentration of formaldehyde in the stationary RICE exhaust and you are not using an oxidation catalyst or NSCR, you must petition the Administrator for operating limitations to be established during the initial performance test and continuously monitored thereafter; or

for approval of no operating limitations. You must not conduct the initial performance test until after the petition has been approved by the Administrator.

(g) If you petition the Administrator for approval of operating limitations, your petition must include the information described in paragraphs (g)(1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as operating limitations;

(2) A discussion of the relationship between these parameters and HAP emissions, identifying how HAP emissions change with changes in these parameters, and how limitations on these parameters will serve to limit HAP emissions;

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations;

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(h) If you petition the Administrator for approval of no operating limitations, your petition must include the information described in paragraphs (h)(1) through (7) of this section.

(1) Identification of the parameters associated with operation of the stationary RICE and any emission control device which could change intentionally (*e.g.*, operator adjustment, automatic controller adjustment, *etc.*) or unintentionally (*e.g.*, wear and tear, error, *etc.*) on a routine basis or over time;

(2) A discussion of the relationship, if any, between changes in the parameters and changes in HAP emissions;

(3) For the parameters which could change in such a way as to increase HAP emissions, a discussion of whether establishing limitations on the parameters would serve to limit HAP emissions;

(4) For the parameters which could change in such a way as to increase HAP emissions, a discussion of how you could establish upper and/or lower values for the parameters which would establish limits on the parameters in operating limitations;

(5) For the parameters, a discussion identifying the methods you could use to measure them and the instruments you could use to monitor them, as well as the relative accuracy and precision of the methods and instruments;

(6) For the parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and

(7) A discussion of why, from your point of view, it is infeasible or unreasonable to adopt the parameters as operating limitations.

(i) The engine percent load during a performance test must be determined by documenting the calculations, assumptions, and measurement devices used to measure or estimate the percent load in a specific application. A written report of the average percent load determination must be included in the notification of compliance status. The following information must be included in the written report: the engine model number, the engine manufacturer, the year of purchase, the manufacturer's site-rated brake horsepower, the ambient temperature, pressure, and humidity during the performance test, and all assumptions that were made to estimate or calculate percent load during the performance test must be clearly explained. If measurement devices such as flow meters, kilowatt meters, beta analyzers, stain gauges, etc. are used, the model number of the measurement device, and an estimate of its accurate in percentage of true value must be provided.

§ 63.6625 What are my monitoring, installation, operation, and maintenance requirements?

(a) If you elect to install a CEMS as specified in Table 5 of this subpart, you must install, operate, and maintain a CEMS to monitor CO and either oxygen or CO_2 at both the inlet and the outlet of the control device according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) Each CEMS must be installed, operated, and maintained according to the applicable performance specifications of 40 CFR part 60, appendix B.

(2) You must conduct an initial performance evaluation and an annual relative accuracy test audit (RATA) of each CEMS according to the requirements in § 63.8 and according to the applicable performance specifications of 40 CFR part 60, appendix B as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must have at least two data points, with each representing a different 15-minute period, to have a valid hour of data.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2) and recorded in parts per million or parts per billion (as appropriate for the applicable limitation) at 15 percent oxygen or the equivalent CO_2 concentration.

(b) If you are required to install a continuous parameter monitoring system (CPMS) as specified in Table 5 of this subpart, you must install, operate, and maintain each CPMS according to the requirements in § 63.8.

(c) If you are operating a new or reconstructed stationary RICE which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, you must monitor and record your fuel usage daily with separate fuel meters to measure the volumetric flow rate of each fuel. In addition, you must operate your stationary RICE in a manner which reasonably minimizes HAP emissions.

§ 63.6630 How do I demonstrate initial compliance with the emission limitations and operating limitations?

(a) You must demonstrate initial compliance with each emission and operating limitation that applies to you according to Table 5 of this subpart.

(b) During the initial performance test, you must establish each operating limitation in Tables 1b and 2b of this subpart that applies to you.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6645.

Continuous Compliance Requirements

§ 63.6635 How do I monitor and collect data to demonstrate continuous compliance?

(a) If you must comply with emission and operating limitations, you must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously at all times that the stationary RICE is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels. You must, however, use all the valid data collected during all other periods.

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?

(a) You must demonstrate continuous compliance with each emission limitation and operating limitation in Tables 1a and 1b and Tables 2a and 2b of this subpart that apply to you according to methods specified in Table 6 of this subpart.

(b) You must report each instance in which you did not meet each emission limitation or operating limitation in Tables 1a and 1b and Tables 2a and 2b of this subpart that apply to you. These instances are deviations from the emission and operating limitations in this subpart. These deviations must be reported according to the requirements in § 63.6650. If you change your catalyst, you must reestablish the values of the operating parameters measured during the initial performance test. When you reestablish the values of your operating parameters, you must also conduct a performance test to demonstrate that you are meeting the required emission limitation applicable to your stationary RICE.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations from the emission or operating limitations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. For new, reconstructed, and rebuilt stationary RICE, deviations from the emission or operating limitations that occur during the first 200 hours of operation from engine startup (engine burn-in period) are not violations.

Rebuilt stationary RICE means a stationary RICE that has been rebuilt as that term is defined in 40 CFR § 94.11(a).

(e) You must also report each instance in which you did not meet the requirements in Table 8 of this subpart that apply to you. If you own or operate an existing 2SLB stationary RICE, an existing 4SLB stationary RICE, an existing CI stationary RICE, an existing emergency stationary RICE, an existing limited use emergency stationary RICE, or an existing stationary RICE which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, you do not need to comply with the requirements in Table 8 of this subpart. If you own or operate a new or reconstructed stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, a new or reconstructed emergency stationary RICE, or a new or reconstructed limited use stationary RICE, you do not need to comply with the requirements in Table 8 of this subpart, except for the initial notification requirements.

Notifications, Reports, and Records

§ 63.6645 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your stationary RICE before the effective date of this subpart, you must submit an Initial Notification not later than December 13, 2004.

(c) If you start up your new or reconstructed stationary RICE on or after August 16, 2004, you must submit an Initial Notification not later than 120 days after you become subject to this subpart.

(d) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.6590(b), your notification should include the information in § 63.9(b)(2)(i) through (v), and a statement that your stationary RICE has no additional requirements and explain the basis of the exclusion (for example, that it operates exclusively as an emergency stationary RICE).

(e) If you are required to conduct a performance test, you must submit a Notification of Intent to conduct a performance test at least 60 days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(f) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 5 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Table 5 of this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test according to § 63.10(d)(2).

§ 63.6650 What reports must I submit and when?

(a) You must submit each report in Table 7 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 7 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first Compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.6595 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.6595.

(2) The first Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.6595.

(3) Each subsequent Compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each stationary RICE that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6 (a)(3)(iii)(A) or 40 CFR 71.6 (a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The Compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission or operating limitations that apply to you, a statement that there were no deviations from the emission or operating limitations during the reporting period.

(6) If there were no periods during which the continuous monitoring system (CMS), including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission or operating limitation that occurs for a stationary RICE where you are not using a CMS to comply with the emission or operating limitations in this subpart, the Compliance report must contain the information in paragraphs (c)(1) through (4) of this section and the information in paragraphs (d)(1) and (2) of this section.

(1) The total operating time of the stationary RICE at which the deviation occurred during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission or operating limitation occurring for a stationary RICE where you are using a CMS to comply with the emission and operating limitations in this subpart, you must include information in paragraphs (c)(1) through (4) and (e)(1) through (12) of this section.

(1) The date and time that each malfunction started and stopped.

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total operating time of the stationary RICE at which the CMS downtime occurred during that reporting period.

(8) An identification of each parameter and pollutant (CO or formaldehyde) that was monitored at the stationary RICE.

(9) A brief description of the stationary RICE.

(10) A brief description of the CMS.

(11) The date of the latest CMS certification or audit.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6 (a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 7 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission or operating limitation in this subpart, submission of the Compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(g) If you are operating as a new or reconstructed stationary RICE which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, you must submit an annual report according to Table 7 of this subpart by the date specified unless the Administrator has approved a different schedule, according to the information described in paragraphs (b)(1) through (b)(5) of this section. You must report the data specified in (g)(1) through (g)(3) of this section.

(1) Fuel flow rate of each fuel and the heating values that were used in your calculations. You must also demonstrate that the percentage of heat input provided by landfill gas or digester gas is equivalent to 10 percent or more of the total fuel consumption on an annual basis.

(2) The operating limits provided in your federally enforceable permit, and any deviations from these limits.

(3) Any problems or errors suspected with the meters.

§ 63.6655 What records must I keep?

(a) If you must comply with the emission and operating limitations, you must keep the records described in paragraphs (a)(1) through (a)(3), (b)(1) through (b)(3) and (c) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirement in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CEMS or CPMS, you must keep the records listed in paragraphs (b)(1) through (3) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Requests for alternatives to the relative accuracy test for CEMS or CPMS as required in § 63.8(f)(6)(i), if applicable.

(c) If you are operating a new or reconstructed stationary RICE which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, you must keep the records of your daily fuel usage monitors.

(d) You must keep the records required in Table 6 of this subpart to show continuous compliance with each emission or operating limitation that applies to you.

§ 63.6660 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record readily accessible in hard copy or electronic form on-site for at least 2 years after the date of each occurrence, measurement,

maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off-site for the remaining 3 years.

Other Requirements and Information

§ 63.6665 What parts of the General Provisions apply to me?

Table 8 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you. If you own or operate an existing 2SLB, an existing 4SLB stationary RICE, an existing CI stationary RICE, an existing stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, an existing emergency stationary RICE, or an existing limited use stationary RICE, you do not need to comply with any of the requirements of the General Provisions. If you own or operate a new stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, a new emergency stationary RICE, or a new limited use stationary RICE, you do not need to comply with the requirements in the General Provisions except for the initial notification requirements.

§ 63.6670 Who implements and enforces this subpart?

(a) This subpart is implemented and enforced by the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the U.S. EPA) has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out whether this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are:

(1) Approval of alternatives to the non-opacity emission limitations and operating limitations in § 63.6600 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(5) Approval of a performance test which was conducted prior to the effective date of the rule, as specified in § 63.6610(b).

§ 63.6675 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA); in 40 CFR 63.2, the General Provisions of this part; and in this section as follows:

Area source means any stationary source of HAP that is not a major source as defined in part 63.

Associated equipment as used in this subpart and as referred to in section 112(n)(4) of the CAA, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the well bore to the point of custody transfer, except glycol dehydration units, storage vessels with potential for flash emissions, combustion turbines, and stationary RICE.

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Stat. 2399).

Compression ignition engine means any stationary RICE in which a high boiling point liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition, including diesel engines, dual-fuel engines, and engines that are not spark ignition.

Custody transfer means the transfer of hydrocarbon liquids or natural gas: After processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation. For the purposes of this subpart, the point at which such liquids or natural gas enters a natural gas processing plant is a point of custody transfer.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation or operating limitation;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or operating limitation in this subpart during malfunction, regardless or whether or not such failure is permitted by this subpart.

(4) Fails to conform to any provision of the applicable startup, shutdown, or malfunction plan, or to satisfy the general duty to minimize emissions established by § 63.6(e)(1)(i).

Diesel engine means any stationary RICE in which a high boiling point liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition. This process is also known as compression ignition.

Diesel fuel means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150 to 360 degrees Celsius. One commonly used form is fuel oil number 2.

Digester gas means any gaseous by-product of wastewater treatment typically formed through the anaerobic decomposition of organic waste materials and composed principally of methane and CO_2.

Dual-fuel engine means any stationary RICE in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel.

Emergency stationary RICE means any stationary RICE that operates in an emergency situation. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc. Emergency stationary RICE may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the manufacturer, the vendor, or the insurance company associated with the engine. Required testing of such units should be minimized, but there is no time limit on the use of emergency stationary RICE in emergency situations and for routine testing and maintenance. Emergency stationary RICE may also operate an additional 50 hours per year in non-emergency situations.

Four-stroke engine means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution.

Gaseous fuel means a material used for combustion which is in the gaseous state at standard atmospheric temperature and pressure conditions.

Glycol dehydration unit means a device in which a liquid glycol

(including, but not limited to, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes ''rich'' glycol. This glycol is then regenerated in the glycol dehydration unit reboiler. The ''lean'' glycol is then recycled.

Hazardous air pollutants (HAP) means any air pollutants listed in or pursuant to section 112(b) of the CAA.

ISO standard day conditions means 288 degrees Kelvin (15 degrees Celsius), 60 percent relative humidity and 101.3 kilopascals pressure.

Landfill gas means a gaseous by-product of the land application of municipal refuse typically formed through the anaerobic decomposition of waste materials and composed principally of methane and CO_2.

Lean burn engine means any two-stroke or four-stroke spark ignited engine that does not meet the definition of a rich burn engine.

Limited use stationary RICE means any stationary RICE that operates less than 100 hours per year.

Liquefied petroleum gas means any liquefied hydrocarbon gas obtained as a by-product in petroleum refining of natural gas production.

Liquid fuel means any fuel in liquid form at standard temperature and pressure, including but not limited to diesel, residual/crude oil, kerosene/naphtha (jet fuel), and gasoline.

Major Source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control;

(2) For oil and gas production facilities, emissions from processes, operations, or equipment that are not part of the same oil and gas production facility, as defined in § 63.1271 of subpart HHH of this part, shall not be aggregated;

(3) For production field facilities, only HAP emissions from glycol dehydration units, storage vessel with the potential for flash emissions, combustion turbines and reciprocating internal combustion engines shall be aggregated for a major source determination; and

(4) Emissions from processes, operations, and equipment that are not part of the same natural gas transmission and storage facility, as defined in § 63.1271 of subpart HHH of this part, shall not be aggregated.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the Earth's surface, of which the principal constituent is methane. May be field or pipeline quality.

Non-selective catalytic reduction (NSCR) means an add-on catalytic nitrogen oxides (NO_X) control device for rich burn engines that, in a two-step reaction, promotes the conversion of excess oxygen, NO_X, CO, and volatile organic compounds (VOC) into CO_2, nitrogen, and water.

Oil and gas production facility as used in this subpart means any grouping of equipment where hydrocarbon liquids are processed, upgraded (*i.e.*, remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission and storage source category. For purposes of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas, surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.

Oxidation catalyst means an add-on catalytic control device that controls CO and VOC by oxidation.

Peaking unit or engine means any standby engine intended for use during periods of high demand that are not emergencies.

Percent load means the fractional power of an engine compared to its maximum manufacturer's design capacity at engine site conditions. Percent load may range between 0 percent to above 100 percent.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. For oil and natural gas production facilities subject to subpart HH of this part, the potential to emit provisions in § 63.760(a) may be used. For natural gas transmission and storage facilities subject to subpart HHH of this part, the maximum annual facility gas throughput for storage facilities may be determined according to § 63.1270(a)(1) and the maximum annual throughput for transmission facilities may be determined according to § 63.1270(a)(2).

Production field facility means those oil and gas production facilities located prior to the point of custody transfer.

Production well means any hole drilled in the earth from which crude oil, condensate, or field natural gas is extracted.

Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C_3H_8.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rich burn engine means any four-stroke spark ignited engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1. Engines originally manufactured as rich burn engines, but modified prior to December 19, 2002 with passive emission control technology for NO_X (such as pre-combustion chambers) will be considered lean burn engines. Also, existing engines where there are no manufacturer's recommendations regarding air/fuel ratio will be considered a rich burn engine if the excess oxygen content of the exhaust at

full load conditions is less than or equal to 2 percent.

Site-rated HP means the maximum manufacturer's design capacity at engine site conditions.

Spark ignition engine means a type of engine in which a compressed air/fuel mixture is ignited by a timed electric spark generated by a spark plug.

Stationary reciprocating internal combustion engine (RICE) means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. Stationary RICE differ from mobile RICE in that a stationary RICE is not a non-road engine as defined at 40 CFR 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition.

Stationary RICE test cell/stand means an engine test cell/stand, as defined in subpart PPPPP of this part, that tests stationary RICE.

Stoichiometric means the theoretical air-to-fuel ratio required for complete combustion.

Storage vessel with the potential for flash emissions means any storage vessel that contains a hydrocarbon liquid with a stock tank gas-to-oil ratio equal to or greater than 0.31 cubic meters per liter and an American Petroleum Institute gravity equal to or greater than 40 degrees and an actual annual average hydrocarbon liquid throughput equal to or greater than 79,500 liters per day. Flash emissions occur when dissolved hydrocarbons in the fluid evolve from solution when the fluid pressure is reduced.

Subpart means 40 CFR part 63, subpart ZZZZ.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Two-stroke engine means a type of engine which completes the power cycle in single crankshaft revolution by combining the intake and compression operations into one stroke and the power and exhaust operations into a second stroke. This system requires auxiliary scavenging and inherently runs lean of stoichiometric.

Tables to Subpart ZZZZ of Part 63

As stated in §§ 63.6600 and 63.6640, you must comply with the following emission limitations for existing, new and reconstructed 4SRB stationary RICE at 100 percent load plus or minus 10 percent:

TABLE 1a TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE

For each . . .	You must meet *one* of the following emission limitations . . .
1. 4SRB RICE	a. Reduce formaldehyde emissions by 76 percent or more. If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you may reduce formaldehyde emissions by 75 percent or more until June 15, 2007, or b. Limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2.

As stated in §§ 63.6600, 63.6630 and 63.6640, you must comply with the following operating emission limitations for existing, new and reconstructed 4SRB stationary RICE:

TABLE 1B TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE

For each . . .	You must meet the following emission limitation . . .
1. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and using NSCR.	a. Maintain your catalyst so that the pressure drop across the catalyst does not change by more than two inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the initial performance test; and b. Maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 750°F and less than or equal to 1250°F.
2. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent if applicable) and not using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and not using NSCR.	Comply with any operating limitations approved by the Administrator.

As stated in §§ 63.6600 and 63.6640, you must comply with the following emission limitations for new and reconstructed lean burn and new and reconstructed compression ignition stationary RICE at 100 percent load plus or minus 10 percent:

TABLE 2a TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR NEW AND RECONSTRUCTED LEAN BURN AND COMPRESSION IGNITION STATIONARY RICE

For each . . .	You must meet the following emission limitation . . .
1. 2SLB stationary RICE	a. Reduce CO emissions by 58 percent or more; or b. Limit concentration of formaldehyde in the stationary RICE exhaust to 12 ppmvd or less at 15 percent O_2. If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you may limit concentration of formaldehyde to 17 ppmvd or less at 15 percent O_2 until June 15, 2007.
2. 4SLB stationary RICE	a. Reduce CO emissions by 93 percent or more; or b. Limit concentration of formaldehyde in the stationary RICE exhaust to 14 ppmvd or less at 15 percent O_2.
3. CI stationary RICE	a. Reduce CO emissions by 70 percent or more; or b. Limit concentration of formaldehyde in the stationary RICE exhaust to 580 ppbvd or less at 15 percent O_2.

As stated in §§ 63.6600, 63.6630, and 63.6640, you must comply with the following operating limitations for new and reconstructed lean burn and new and reconstructed compression ignition stationary RICE:

TABLE 2b TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR NEW AND RECONSTRUCTED LEAN BURN AND COMPRESSION IGNITION STATIONARY RICE

For each . . .	You must meet the following operating limitation . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions and using an oxidation catalyst; or 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and using an oxidation catalyst.	a. Maintain your catalyst so that the pressure drop across the catalyst does not change by more than two inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst that was measured during the initial performance test; and b. Maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 450°F and less than or equal to 1350°F.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions and not using an oxidation catalyst; or 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and not using an oxidation catalyst.	Comply with any operating limitations approved by the Administrator.

As stated in §§ 63.6615 and 63.6620, you must comply with the following subsequent performance test requirements:

TABLE 3 TO SUBPART ZZZZ OF PART 63.—SUBSEQUENT PERFORMANCE TESTS

For each . . .	Complying with the requirement to . . .	You must . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE.	Reduce CO emissions and not using a CEMS	Conduct subsequent performance tests semiannually.[1]
2. 4SRB stationary RICE with a brake horsepower ≥5,000.	Reduce formaldehyde emissions	Conduct subsequent performance tests semiannually.[1]
3. Stationary RICE (all stationary RICE subcategories and all brake horsepower ratings).	Limit the concentration of formaldehyde in the stationary RICE exhaust.	Conduct subsequent performance tests semiannually.[1]

[1] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

As stated in §§ 63.6610, 63.6620, and 63.6640, you must comply with the following requirements for performance tests:

TABLE 4 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions	i. Measure the O_2 at the inlet and outlet of the control device; and	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00[1] (incorporated by reference, see § 63.14). Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.

TABLE 4 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		ii. Measure the CO at the inlet and the outlet of the control device.	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 [1] (incorporated by reference, see § 63.14). The CO concentration must be at 15 percent O_2, dry basis.
2. 4SRB stationary RICE ..	a. Reduce formaldehyde emissions.	i. Select sampling port location and the number of traverse points; and	(1) Method 1 or 1A of 40 CFR part 60 appendix A § 63.7(d)(1)(i).	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A.	(a) Measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde concentration.
		iii. Measure moisture content at the inlet and outlet of the control device; and	(1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.
		iv. Measure formaldehyde at the inlet and the outlet of the control device	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [2], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust.	i. Select the sampling port location and the number of traverse points; and	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A.	(a) Measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde concentration.
		iii. Measure moisture content of the stationary RICE exhaust at the sampling port location; and	(1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.
		iv. Measure formaldehyde at the exhaust of the stationary RICE.	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [2], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[1] You may also use Methods 3A and 10 as options to ASTM–D6522–00. You may obtain a copy of ASTM–D6522–00 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohochen, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

[2] You may obtain a copy of ASTM–D6348–03 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohochen, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

As stated in §§ 63.6625 and 63.6630, you must initially comply with the emission and operating limitations as required by the following:

TABLE 5 TO SUBPART ZZZZ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions and using oxidation catalyst, and using a CPMS.	i. the average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions and not using oxidation catalyst.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
3. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions, and using a CEMS	i. You have installed a CEMS to continuously monitor CO and either O_2 or CO_2 at both the inlet and outlet of the oxidation catalyst according to the requirements in § 63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and iii. The average reduction of CO calculated using § 63.6620 equals or exceeds the required percent reduction. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average percent reduction achieved during the 4-hour period.
4. 4SRB stationary RICE	a. Reduce formaldehyde emissions and using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
5. 4SRB stationary RICE	a. Reduce formaldehyde emissions and not using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
6. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.

TABLE 5 TO SUBPART ZZZZ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS—Continued

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
7. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.

As stated in § 63.6640, you must continuously comply with the emissions and operating limitations as required by the following:

TABLE 6 TO SUBPART ZZZZ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
1. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions and using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved [1]; and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions and not using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved [1]; and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
3. 2SLB and 4SLB stationary RICE and CI stationary RICE.	a. Reduce CO emissions and using a CEMS	i. Collecting the monitoring data according to § 63.6625(a), reducing the measurements to 1-hour averages, calculating the percent reduction of CO emissions according to § 63.6620; and ii. Demonstrating that the catalyst achieves the required percent reduction of CO emissions over the 4-hour averaging period; and iii. Conducting an annual RATA of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.
4. 4SRB stationary RICE	a. Reduce formaldehyde emissions and using NSCR.	i. Collecting the catalyst inlet temperature data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and

TABLE 6 TO SUBPART ZZZZ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS—Continued

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
		iv. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
5. 4SRB stationary RICE	a. Reduce formaldehyde emissions and not using NSCR.	i. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and ii. reducing these data to 4-hour rolling averages; iii. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
6. 4SRB stationary RICE with a brake horsepower ≥5,000.	Reduce formaldehyde emissions	Conducting semiannual performance tests for formaldehyde to demonstrate that the required formaldehyde percent reduction is achieved [1].
7. Stationary RICE	Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit [1]; and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
8. Stationary RICE	Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit [1]; and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.

[1] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

As stated in § 63.6650, you must comply with the following requirements for reports:

TABLE 7 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations or operating limitations that apply to you, a statement that there were no deviations from the emission limitations or operating limitations during the reporting period. If there were no periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), a statement that there were not periods during which the CMS was out-of-control during the reporting period; or	i. Semiannually according to the requirements in § 63.6650(b).

TABLE 7 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
	b. If you had a deviation from any emission limitation or operating limitation during the reporting period, the information in § 63.6650(d). If there were periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), the information in § 63.6650(e); or	i. Semiannually according to the requirements in § 63.6650(b).
	c. If you had a startup, shutdown or malfunction during the reporting period, the information in § 63.10(d)(5)(i).	i. Semiannually according to the requirements in § 63.6650(b).
2. An immediate startup, shutdown, and malfunction report if actions addressing the startup, shutdown, or malfunction were inconsistent with your startup, shutdown, or malfunction plan during the reporting period.	a. Actions taken for the event; and	i. By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii).	i. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authorities. (§ 63.10(d)(5)(ii))
3. Report	a. The fuel flow rate of each fuel and the heating values that were used in your calculations, and you must demonstrate that the percentage of heat input provided by landfill gas or digester gas, is equivalent to 10 percent or more of the gross heat input on an annual basis; and	i. Annually, according to the requirements in § 63.6650.
	b. The operating limits provided in your federally enforceable permit, and any deviations from these limits; and	i. See item 3.a.i.
	c. Any problems or errors suspected with the meters.	i. See item 3.a.i.

As stated in § 63.6665, you must comply with the following applicable general provisions:

TABLE 8 TO SUBPART ZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.1	General applicability of the General Provisions.	Yes.	
§ 63.2	Definitions	Yes	Additional terms defined in § 63.6675.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities and circumvention	Yes.	
§ 63.5	Construction and reconstruction	Yes.	
§ 63.6(a)	Applicability	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new and reconstructed sources.	Yes.	
§ 63.6(b)(5)	Notification	Yes.	
§ 63.6(b)(6)	[Reserved].	.	
§ 63.6(b)(7)	Compliance dates for new and reconstructed area sources that become major sources.	Yes.	
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes.	
§ 63.6(c)(3)–(4)	[Reserved].	.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major sources.	Yes.	
§ 63.6(d)	[Reserved].	.	
§ 63.6(e)(1)	Operation and maintenance	Yes.	
§ 63.6(e)(2)	[Reserved].	.	
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan	Yes.	
§ 63.6(f)(1)	Applicability of standards except during startup shutdown malfunction (SSM).	Yes.	
§ 63.6(f)(2)	Methods for determining compliance	Yes.	
§ 63.6(f)(3)	Finding of compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of alternate standard	Yes.	
§ 63.6(h)	Opacity and visible emission standards	No	Subpart ZZZZ does not contain opacity or visible emission standards.
§ 63.6(i)	Compliance extension procedures and criteria.	Yes.	

TABLE 8 TO SUBPART ZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ—Continued

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Subpart ZZZZ contains performance test dates at § 63.6610.
§ 63.7(a)(3)	CAA section 114 authority	Yes.	
§ 63.7(b)(1)	Notification of performance test	Yes.	
§ 63.7(b)(2)	Notification of rescheduling	Yes.	
§ 63.7(c)	Quality assurance/test plan	Yes.	
§ 63.7(d)	Testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(e)(2)	Conduct of performance tests and reduction of data.	Yes	Subpart ZZZZ specifies test methods at § 63.6620.
§ 63.7(e)(3)	Test run duration	Yes.	
§ 63.7(e)(4)	Administrator may require other testing under section 114 of the CAA.	Yes.	
§ 63.7(f)	Alternative test method provisions	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of tests	Yes.	
§ 63.8(a)(1)	Applicability of monitoring requirements	Yes	Subpart ZZZZ contains specific requirements for monitoring at § 63.6625.
§ 63.8(a)(2)	Performance specifications	Yes.	
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring for control devices	No.	
§ 63.8(b)(1)	Monitoring	Yes.	
§ 63.8(b)(2)–(3)	Multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)	Monitoring system operation and maintenance.	Yes.	
§ 63.8(c)(1)(i)	Routine and predictable SSM	Yes.	
§ 63.8(c)(1)(ii)	SSM not in Startup Shutdown Malfunction Plan.	Yes.	
§ 63.8(c)(1)(iii)	Compliance with operation and maintenance requirements.	Yes.	
§ 63.8(c)(2)–(3)	Monitoring system installation	Yes.	
§ 63.8(c)(4)	Continuous monitoring system (CMS) requirements.	Yes	Except that subpart ZZZZ does not require Continuous Opacity Monitoring System (COMS).
§ 63.8(c)(5)	COMS minimum procedures	No	Subpart ZZZZ does not require COMS.
§ 63.8(c)(6)–(8)	CMS requirements	Yes	Except that subpart ZZZZ does not require COMS.
§ 63.8(d)	CMS quality control	Yes.	
§ 63.8(e)	CMS performance evaluation	Yes	Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f)(1)–(5)	Alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	Yes.	
§ 63.8(g)	Data reduction	Yes	Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at §§ 63.6635 and 63.6640.
§ 63.9(a)	Applicability and State delegation of notification requirements.	Yes.	
§ 63.9(b)(1)–(5)	Initial notifications	Yes	Except that § 63.9(b)(3) is reserved.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification of special compliance requirements for new sources.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emission (VE)/opacity test.	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.9(g)(1)	Notification of performance evaluation	Yes.	
§ 63.9(g)(2)	Notification of use of COMS data	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.9(g)(3)	Notification that criterion for alternative to RATA is exceeded.	Yes	If alternative is in use.
§ 63.9(h)(1)–(6)	Notification of compliance status	Yes	Except that notifications for sources using a CEMS are due 30 days after completion of performance evaluations. § 63.9(h)(4) is reserved.
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	

TABLE 8 TO SUBPART ZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ—Continued

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.10(a)	Administrative provisions for recordkeeping/reporting.	Yes.	
§ 63.10(b)(1)	Record retention	Yes.	
§ 63.10(b)(2)(i)–(v)	Records related to SSM	Yes.	
§ 63.10(b)(2)(vi)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Record when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to RATA.	Yes	For CO standard if using RATA alternative.
§ 63.10(b)(2)(xiv)	Records of supporting documentation	Yes.	
§ 63.10(b)(3)	Records of applicability determination	Yes.	
§ 63.10(c)	Additional records for sources using CEMS.	Yes	Except that § 63.10(c)(2)–(4) and (9) are reserved.
§ 63.10(d)(1)	General reporting requirements	Yes.	
§ 63.10(d)(2)	Report of performance test results	Yes.	
§ 63.10(d)(3)	Reporting opacity or VE observations	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.10(d)(4)	Progress reports	Yes.	
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes.	
§ 63.10(e)(1) and (2)(i)	Additional CMS reports	Yes.	
§ 63.10(e)(2)(ii)	COMS-related report	No	Subpart ZZZZ does not require COMS.
§ 63.10(e)(3)	Excess emission and parameter exceedances reports.	Yes	Except that § 63.10(e)(3)(i)(C) is reserved.
§ 63.10(e)(4)	Reporting COMS data	No	Subpart ZZZZ does not require COMS.
§ 63.10(f)	Waiver for recordkeeping/reporting	Yes.	
§ 63.11	Flares	No.	
§ 63.12	State authority and delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes.	
§ 63.15	Availability of information	Yes.	

[FR Doc. 04–4816 Filed 6–14–04; 8:45 am]

BILLING CODE 6560–50–U

Federal Register

Tuesday,
June 15, 2004

Part III

Department of Housing and Urban Development

24 CFR Part 203

Eligibility of Mortgages on Hawaiian Home Lands Insured Under Section 247; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4779–I–01]

RIN 2502–AH92

Eligibility of Mortgages on Hawaiian Home Lands Insured Under Section 247

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations regarding eligibility for mortgages on Hawaiian home lands to reflect a recent statutory change to the National Housing Act.

DATES: *Effective Date:* July 15, 2004.

Comment Due Date: August 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Electronic comments may be submitted through Regulations.gov (*www.regulations.gov*). Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Office of the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule implements an amendment to Section 247 of the National Housing Act (12 U.S.C. 1715z–12) relating to single family insurance on Hawaiian home lands made by section 215 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) (FY2002 HUD Appropriations Act). The amendment revised the definition of the terms ''Hawaiian home lands'' and ''native Hawaiian.'' Section 215 also changed the eligibility criterion for the receipt of a leasehold or mortgage insured under section 247 of the National Housing Act.

II. This Interim Rule

This interim rule amends 24 CFR 203.43i(c)(2) to conform the existing regulatory definition of the term ''Hawaiian home lands'' to the revised definition of the term found in section 247(d)(2) of the National Housing Act. Even though the only change is the addition of two statutory citations, the inclusion of the citations makes the regulatory definition consistent with the statutory language. This rule also amends 24 CFR 203.43i(c)(3) to conform the existing regulatory definition of the term ''native Hawaiian'' to the revised definition enacted by section 215 of the FY2002 HUD Appropriations Act. A ''native Hawaiian'' now is defined as ''any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or section 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (73 Stat. 5).''

Section 247 of the National Housing Act was amended by section 215(2) of the FY2002 HUD Appropriations Act to provide that possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110) shall be necessary to certify eligibility to obtain an insured mortgage. Therefore, 24 CFR 203.43i(i) is amended to state that, in addition to all the other eligibility requirements set forth in subpart A of 24 CFR part 203, possession of a lease issued under section 207 of the Hawaiian Homes Commission Act of 1920, which has been certified by the Department of Hawaiian Home Lands as being valid, current, and not in default, will be sufficient to satisfy the eligibility of a mortgagor for an insured mortgage under this section. Such certification is customary when a leasehold is the security for a mortgage transaction.

This rule amends 24 CFR 203.43i(h) also as a result of the amendment made by section 215(2) of the FY2002 HUD Appropriations Act. The restrictive language in § 203.43i(h) with respect to assumption of the leasehold is removed. As a consequence of the enactment of section 215(2), this rule eliminates the requirement for a certification from the Department of Hawaiian Home Lands that the mortgagor (lessee) qualifies as a native Hawaiian; therefore, the requirement for a certification when a leasehold is assumed also is eliminated.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.''

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The amendments enacted by Section 215 of the FY2002 HUD Appropriations Act, discussed above, are fairly prescriptive and allow little, if any, discretion in defining a ''native Hawaiian'' or ''Hawaiian home lands'' or in setting forth the procedure for a qualified lessee to establish proof of eligibility for mortgage insurance. Moreover, the regulatory text reflects the amendatory language of Section 215 without any substantive change. Accordingly, the Department believes that it is in the public interest to publish this interim rule to make the statutory amendments effective as soon as possible and that prior public procedure is unnecessary. Although the Department is publishing this interim rule for effect, the Department is inviting and welcomes public comment on the rule. Comments received in response to the published interim rule will be considered during development of a final rule that will supersede this interim rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in

the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. The rule would facilitate FHA insurance of mortgages on leaseholds held by native Hawaiians. Although HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternative to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3 (f) of the order (although not economically significant, as provided in section 3 (f)(1) of the order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indian-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, solar energy.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d)

■ 2. Amend § 203.43i to revise paragraphs (c)(2) and (3), (h), and (i) to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

* * * * *

(c)(1) * * *

(2) Hawaiian home lands means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union,'' approved March 18, 1959 (73 Stat. 5).

(3) Native Hawaiian means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat.111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union,'' approved March 18, 1959 (73 Stat. 5).

* * * * *

(h) *Form of lease.* The form of lease must be approved by both HUD and the Department of Hawaiian Home Lands (DHHL). The lease may not be terminated by DHHL without the approval of the Secretary while the mortgage is insured or held by the Secretary.

(i) *Eligibility of mortgagor.* In addition to the eligibility requirements contained in this subpart, possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat.110) that has been certified by the Department of Hawaiian Home Lands as being valid, current, and not in default, shall be sufficient to certify eligibility to receive a mortgage to be insured under this section.

Dated: May 19, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–13431 Filed 6–14–04; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
June 15, 2004

Part IV

Environmental Protection Agency

Fifty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0090; FRL–7359–6]

Fifty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Fifty-Fourth Report to the Administrator of EPA on April 23, 2004. In the 54th ITC Report, which is included with this notice, the ITC is revising the *Priority Testing List* by removing 25 vanadium compounds. In addition, the ITC is soliciting public comments on the idea of posting on the ITC's web site, broad non-Confidential Business Information (CBI) categories of worker numbers and worker hours created from TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule submissions.

DATES: Comments, identified by docket ID number OPPT–2004–0090, must be received on or before July 15, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: John D. Walker, ITC Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax: (202) 564–7528; e-mail address: *walker.johnd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0090. 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 CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the Office of Pollution Prevention and Toxics (OPPT) Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may also access additional information about the ITC at *http://www.epa.gov/opptintr/itc/* or through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at *http://www.epa.gov/opptsfrs/home/opptsim.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.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand

delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow e online instructions for submitting comments. Once in the system, select "search,'' and then key in docket ID number OPPT–2004–0090. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0090. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0090. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC 54th Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this notice.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601*et seq*.) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e)*Priority Testing List* at least every 6 months.

A. The ITC's 54th Report

The 54th ITC Report was transmitted to the EPA's Administrator on April 23, 2004, and is included in this notice. In the 54th ITC Report, the ITC is revising the *Priority Testing List* by removing 25 vanadium compounds. In addition, the ITC is soliciting public comments on the idea of posting on the ITC's web site, broad non-CBI categories of worker numbers and worker hours created from TSCA section 8(a) PAIR rule submissions.

B. Status of the Priority Testing List

The current TSCA 4(e) *Priority Testing List* as of April 2004 can be found in Table 1 of the 54th ITC Report, which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: June 7, 2004.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Fifty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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SUMMARY

In this 54th ITC Report, the ITC is revising the *Priority Testing List* by removing 25 vanadium compounds. In this report public comments are requested on the idea of posting on the ITC's web site, broad non-Confidential Business Information (CBI) categories of worker numbers and worker hours created from Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Reporting (PAIR) rule submissions.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (APRIL 2004)

ITC Report	Date	Chemical name/group	Action
31	January 1993	12 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	4-Tert-butylphenol and Branched nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
47	November 2000	9 Indium compounds	Recommended
48	May 2001	Benzenamine, 3-chloro-2,6-dinitro- N,N-dipropyl-4-(trifluoromethyl)-	Recommended
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended
50	May 2002	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	Recommended
50	May 2002	1-Triazene, 1,3-diphenyl-	Recommended
51	November 2002	18 Vanadium compounds	Recommended
53	November 2003	3 Pyridinamines	Recommended
53	November 2003	20 Tungsten compounds	Recommended

I. Background

The ITC was established by section 4(e) of TSCA "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC's web site (*http://www.epa.gov/opptintr/itc/*) within a few days of submission to the Administrator and from the EPA's web site *http://www.epa.gov/fedrgstr/* after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC Staff, ITC Members and their U.S. Government organizations, and contract support provided by EPA. ITC Members and Staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the EPA Administrator, the U.S. EPA's Office of Pollution Prevention and Toxics (OPPT) adds the chemicals from the revised *Priority Testing List* to the TSCA section 8(a) PAIR and TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rules. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports (*http://www.epa.gov/opptintr/chemtest/pairform.pdf/*). The HaSDR rule requires producers, importers, and processors of all chemicals added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (Ref. 1). All submissions must be received by EPA

within 90 days of the reporting rules **Federal Register** publication date.

B. ITC's Use of TSCA Section 8 and Other Information

The ITC's use of TSCA section 8 and other information is described in previous ITC reports (*http://www.epa.gov/opptintr/itc/rptmain.htm/*).

C. Previous Requests to Add Chemicals to the TSCA Section 8(a) PAIR Rule

In its 53rd ITC Report, the ITC requested that EPA add 3 pyridinamines and 20 tungsten compounds to the TSCA section 8(a) PAIR rule (Ref. 2).

D. Previous Requests to Add Chemicals to the TSCA Section 8(d) HaSDR Rule

In previous ITC reports it was requested that the following chemicals be added to the TSCA section 8(d) HaSDR rule: 3H-1,2,4-triazole-3-thione, 5-amino-1,2-dihydro- (3-amino-5-mercapto-1,2,4-triazole) (CAS No. 16691–43–3) and imidazo[4,5-d]imidazole-2,5(1H,3H)-dione, tetrahydro- (glycoluril) (CAS No. 496–46–8) (42nd ITC Report, Ref. 3), 9 indium compounds (47th ITC Report, Ref. 4); benzenamine, 3-chloro-2, 6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) (48th ITC Report, Ref. 5); and stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) (49th ITC Report, Ref. 6); benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) (50th ITC Report, Ref. 7). The TSCA section 8(d) studies requested for these chemicals were listed in the ITC's 51st Report (Ref. 8). On May 4, 2004, EPA issued a final rule pursuant to TSCA section 8(d) requiring manufacturers (including importers) of these 15 chemicals to report certain unpublished health and safety data to EPA (Ref. 9).

III. ITC's Activities During this Reporting Period (November 2003 to April 2004)

During this reporting period, the ITC received voluntary submissions of exposure-related information on vanadium compounds. The ITC acknowledges and appreciates the submissions received from BASF Corporation; Cormetech, Inc.; Engelhard Corporation; OSRAM Sylvania, Inc.; W.R. Grace & Company; Color Pigments Manufacturers Association; Sud Chemie; Akzo Nobel Chemicals, Inc.; American Acryl L.P. International, Inc.; and the Vanadium Producers and Reclaimers Association (VPRA). The procedures for submitting voluntary information through the ITC's Voluntary Information Submissions Innovative Online Network (VISION) are described on the ITC's web site (*http://www.epa.gov/opptintr/itc/vision.htm/*).

During this reporting period, the ITC reviewed the CBI PAIR reports submitted in response to the June 11, 2003, PAIR rule (Ref. 10). The ITC is exploring the idea of sanitizing the CBI data to create broad non-CBI categories of worker numbers and worker hours that it could share with the public. To accomplish this, the ITC is proposing the idea of posting these broad non-CBI categories of worker numbers and worker hours on the ITC's web site (*http://www.epa.gov/opptintr/itc/*).

There is a precedent for the ITC to do this. In its November 30, 1999, 45th ITC Report to the EPA Administrator (Ref. 11), the ITC discussed the idea of sharing non-CBI production volume ranges with the public. In May 2001, the EPA posted on its web site non-CBI production volume ranges for chemicals that were reported in response to the 1998 Inventory Update Rule (IUR) (*http://www.epa.gov/oppt/iur/iur98/index.htm/*). Since then, these ranges have been revised and the non-CBI production volume ranges for chemicals that were reported in response to the 1986, 1990, 1994, and 2002 IUR have been posted on EPA's web site (*http://www.epa.gov/oppt/iur/iur02/index.htm/*).

By making broad non-CBI categories of worker numbers and worker hours available to the public, the ITC is suggesting that this information could be used to make more recent occupational-exposure estimates then provided by the 1981–1983 NIOSH National Occupational Exposure Survey. The ITC is proposing posting the following broad non-CBI categories on its web site:

Worker ranges: <100;100–1,000; 1,000–10,000; and >10,000.

Worker hour ranges: <100, 100–1,000; 1,000–10,000; and >10,000.

Comments on these proposals should be sent to the ITC Director by July 15, 2004.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

In its 45th ITC Report (Ref. 11), the ITC removed 47 chemicals from the *Priority Testing List*, because EPA published a June 9, 1999, **Federal Register** notice proposing *in vitro* dermal absorption rate testing for these chemicals (Ref. 12). In its June 9, 1999, **Federal Register** notice, the EPA also mentioned that *in vitro* dermal absorption rate testing did not have to be conducted for *tert*-butyl alcohol (CAS No. 75–65–0) because an *in vivo* study of its dermal absorption rate was submitted to the EPA in 1998. The ITC is removing *tert*-butyl alcohol from the *Priority Testing List* in this 54th ITC Report because the EPA found that the 1998 *in vivo* study was sufficiently adequate not to require *in vitro* dermal absorption rate testing of *tert*-butyl alcohol. On April 26, 2004, EPA issued a final rule pursuant to TSCA section 4(a) requiring manufacturers (including importers) to conduct *in vitro* dermal absorption rate testing for 34 of these chemicals (Ref. 13).

Forty-three vanadium compounds were added to the *Priority Testing List* in the ITC's 51st Report (Ref. 8). Based on responses to the June 11, PAIR rule (Ref. 10), the ITC is removing 25 vanadium compounds from the *Priority Testing List* (Table 2). The 18 vanadium compounds remaining on the *Priority Testing List* are listed in Table 3.

TABLE 2.—VANADIUM COMPOUNDS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Vanadium compounds
1686–22–2	Vanadium, triethoxyoxo-, (T-4)- [Triethyl orthovanadate]
3153–26–2	Vanadium, oxobis (2,4-pentanedionato-.kappa.O,.kappa.O')-, (SP-5-21)-
5588–84–1	Vanadium, oxotris(2-propanolato)-, (T-4)- [Vanadium triisopropoxide oxide]
7440–62–2	Vanadium
7718–98–1	Vanadium chloride (VCl3) [Vanadium trichloride]

TABLE 2.—VANADIUM COMPOUNDS BEING REMOVED FROM THE PRIORITY TESTING LIST—Continued

CAS No.	Vanadium compounds
10049–16–8	Vanadium fluoride (VF4) [Vanadium tetrafluoride]
10213–09–9	Vanadium, dichlorooxo- [Vanadyl dichloride]
10580–52–6	Vanadium chloride (VCl2) [Vanadium dichloride]
11099–11–9	Vanadium oxide [Polyvanadic acid]
11115–67–6	Ammonium vanadium oxide
12007–37–3	Vanadium boride (VB2)
12070–10–9	Vanadium carbide (VC)
12083–48–6	Vanadium, dichlorobis (.eta.5-2,4-cyclopentadien-1-yl)-
12439–96–2	Vanadium, oxo[sulfato(2-)-kappa.O]-, pentahydrate [Vanadyl sulfate (VOSO4), pentahydrate]
13470–26–3	Vanadium bromide (VBr3)
13476–99–8	Vanadium, tris(2,4-pentanedionato-.kappa.O,.kappa.O')-, (OC-6-11)- [Vanadium tris(acetylacetonate)]
13497–94–4	Silver vanadium oxide (AgVO3)
13930–88–6	Vanadium, oxo[29H,31H-phthalocyaninato(2-)-.kappa.N29,.kappa.N30,.kappa.N31,.kappa.N32]-, (SP-5-12)-
19120–62–8	Vanadium, tris(2-methyl-1-propanolato)oxo-, (T-4)- [Isobutyl orthovanadate]
30486–37–4	Vanadium hydroxide oxide (V(OH)2O)
39455–80–6	Ammonium sodium vanadium oxide
53801–77–7	Bismuth vanadium oxide
68130–18–7	Vanadium hydroxide oxide phosphate (V6(OH)3O3(PO4)7)
68815–09–8	Naphthenic acids, vanadium salts
68990–29–4	Balsams, copaiba, sulfurized, vanadium salts

TABLE 3. —VANADIUM COMPOUNDS BEING RETAINED ON THE PRIORITY TESTING LIST

CAS No.	Vanadium compounds
1314–34–7	Vanadium oxide (V2O3) [Vanadium trioxide]
1314–62–1	Vanadium oxide (V2O5) [Vanadium pentoxide]
7632–51–1	Vanadium chloride (VCl4), (T-4)- [Vanadium tetrachloride]
7727–18–6	Vanadium, trichlorooxo-, (T-4)- [Vanadium oxytrichloride]
7803–55–6	Vanadate (VO31-), ammonium [Ammonium metavanadate]
11130–21–5	Vanadium carbide
12035–98–2	Vanadium oxide (VO)
12036–21–4	Vanadium oxide (VO2)
12166–27–7	Vanadium sulfide (VS)
12604–58–9	Vanadium alloy, base, V,C,Fe (Ferrovanadium)
13517–26–5	Sodium vanadium oxide (Na4V2O7) [Sodium pyrovanadate]
13718–26–8	Vanadate (VO31-), sodium [Sodium metavanadate]
13721–39–6	Sodium vanadium oxide (Na3VO4) [Sodium orthovanadate]
13769–43–2	Vanadate (VO31-), potassium [Potassium metavanadate]

TABLE 3. —VANADIUM COMPOUNDS BEING RETAINED ON THE PRIORITY TESTING LIST—Continued

CAS No.	Vanadium compounds
14059–33–7	Bismuth vanadium oxide (BiVO4)
24646–85–3	Vanadium nitride (VN)
27774–13–6	Vanadium, oxo[sulfato(2-)-.kappa.O]- [Vanadyl sulfate]
65232–89–5	Vanadium hydroxide oxide phosphate

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VI. The TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

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Vacant

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National Institute of Standards and Technology
Dianne Poster, Member
Peter Barker, Alternate

National Oceanographic and Atmospheric Administration
Thomas P. O'Connor, Member, Chair
Teri Rowles Alternate

Environmental Protection Agency
Gerry Brown, Member
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Vera W. Hudson, Member

National Toxicology Program
NIEHS, FDA, and NIOSH Members

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Director
Norma S. L. Williams, Executive Assistant

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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 "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 408/P.L. 108–229

To provide for expansion of Sleeping Bear Dunes National Lakeshore. (May 28, 2004; 118 Stat. 645)

H.R. 708/P.L. 108–230

To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231

To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

H.R. 923/P.L. 108–232

Premier Certified Lenders Program Improvement Act of 2004 (May 28, 2004; 118 Stat. 649)

H.R. 1598/P.L. 108–233

Irvine Basin Surface and Groundwater Improvement Act of 2004 (May 28, 2004; 118 Stat. 654)

H.R. 3104/P.L. 108–234

To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

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