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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–036–2]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by adding Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, to the list of quarantined areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on June 7, 2004 (69 FR 31723–31725, Docket No. 04–036–1), we amended the pine shoot beetle regulations contained in 7 CFR 301.50 through 301.50–10 by adding Decatur, Jennings, and Ripley Counties, IN, and Franklin County, NY, to the list of quarantined areas in § 301.50–3. That action was necessary to prevent the spread of pine shoot beetle into noninfested areas of the United States.

Comments on the interim rule were required to be received on or before August 6, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 31723–31725 on June 7, 2004.

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 26th day of August 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19930 Filed 8–31–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2001–11133; Amendment No. 21–85]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an inadvertent error to a final regulation published in the **Federal Register** of Tuesday, July 27, 2004 (69 FR 44772). The regulation related to the certification of aircraft and airmen for the operation of light-sport aircraft. The correction is to the section concerning experimental certificates.

DATES: The regulation is effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Gardner, Flight Standards Service, General Aviation and Commercial Division (AFS–800), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 907–271–2034, or 202–267–8212.

SUPPLEMENTARY INFORMATION: In the preamble to FAA's final rule ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft,'' the agency stated that it reissued exemptions from 14 CFR part 103 to the Experimental Aircraft Association (EAA), the United States Ultralight Organization (USUA) and Aero Sports Connection (ASC) to permit flight training in ultralight vehicles. These exemptions will expire on January 31, 2008. As stated in the preamble to the final rule, this date coincides with the date established to transition existing ultralight training vehicles and single- and two-place ultralight-like aircraft to the provisions of the final rule.

This document changes a date that was incorrectly provided in the preamble discussion and rule text of paragraph (i)(1) of § 21.191 Experimental certificates. This change is being made to make the rule consistent with the January 31, 2008 date. The changes are as follows:

In FR Doc. 04–16577 appearing on page 44772 in the **Federal Register** of Tuesday, July 27, 2004, make the following corrections:

1. On page 44807, in the third column, in the 15th and 16th lines from the bottom of the page, ''August 31, 2007'' is corrected to read ''January 31, 2008.''

2. On page 44808, in the third column, in the 15th and 16th lines from the bottom of the page, ''August 31, 2007'' is corrected to read ''January 31, 2008.''

3. On page 44859, in the first column, in the 12th line from the bottom of the page, ''August 31, 2007'' is corrected to read ''January 31, 2008.''

§ 21.191 [Corrected]

4. On page 44862, in the third column, in § 21.191(i)(1), ''August 31, 2007'' is corrected to read ''January 31, 2008.''

Issued in Washington, DC, on August 27, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–19937 Filed 8–27–04; 1:33 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18978; Directorate Identifier 2004–NM–127–AD; Amendment 39–13780; AD 2001–14–08 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes, Model MD–10 Series Airplanes, and Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: The FAA is rescinding an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes. That AD requires repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. We issued that AD to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. Since we issued that AD, we have determined that the inspection requirements are identical to the inspection requirements of another existing AD.

DATES: Effective September 1, 2004.

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 2, 2001, the FAA issued AD 2001–14–08, amendment 39–12319 (66 FR 36441, July 12, 2001), which applies to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes. That AD requires repetitive inspections (at intervals not to exceed 6,000 flight hours) of the numbers 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. That action was prompted by reports that, during ground operations or when powered in flight by the air driven generator, the electric motors of the auxiliary hydraulic pump and associated motor feeder cables failed. The actions required by that AD are intended to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Actions Since Previous AD Was Issued

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes, was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 22, 2004 (69 FR 3036). The NPRM, Docket 2003–NM–119–AD, would supersede AD 2001–14–08 to require that the repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions, if necessary, be performed at reduced intervals (*i.e.,* from 6,000 flight hours to 2,500 flight hours). That action was prompted by a report from Boeing that the original compliance time was not adequate, because another incident of failure of an electric motor of the auxiliary hydraulic pump had occurred during the interval between repetitive inspections. The proposed actions are intended to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Since the issuance of AD 2001–14–08, we also issued AD 2004–05–20, amendment 39–13515 (69 FR 11504, March 11, 2004), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. That AD requires modification of the installation wiring for the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear, and repetitive inspections (at intervals not to exceed 2,500 flight hours) of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. That action was

prompted by several reports of failure of the auxiliary hydraulic pump systems. The requirements of that AD are intended to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

The repetitive inspections required by AD 2004–05–20 and proposed in NPRM, Docket 2003–NM–119–AD, are identical to those in AD 2001–14–08, but at different intervals. Accomplishment of the modification and the 2,500 flight-hour inspections requirements of AD 2004–05–20 adequately addresses the identified unsafe condition.

FAA's Determination

Upon further consideration, we have determined that we need to rescind AD 2001–14–08 to prevent operators from performing duplicate actions.

Since this action rescinds a requirement to perform a duplicate action, it has no adverse economic impact and imposes no additional burden on any person. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Other Relevant Rulemaking

For the reasons discussed previously, we are also planning to withdraw NPRM, Docket 2003–NM–119–AD, in a separate rulemaking action.

Comments Invited

Although this is a final rule that was not preceded by notice and an opportunity for public comment, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18978; Directorate Identifier 2004–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov.*

The Rescission

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12319 (66 FR 36441, July 12, 2001).

2001–14–08 R1 McDonnell Douglas: Amendment 39–13780. Docket No. 2004–NM–127–AD.

Effective Date

(a) This AD becomes effective September 1, 2004.

Affected ADs

(b) This action rescinds AD 2001–14–08, Amendment 39–12319.

Applicability

(c) This action applies to Model DC–10 and MD–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; and Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; certificated in any category.

Issued in Renton, Washington, on August 20, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–19924 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2001–11133; Amendment No. 91–282]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an inadvertent error in a correction published in the **Federal Register** on Wednesday, August 18, 2004 (69 FR 51162). The correction related to a final regulation published in the **Federal Register** of Tuesday, July 27, 2004 (69 FR 44772) on the certification of aircraft and airmen for the operation of light-sport aircraft.

DATES: The regulation is effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Gardner, Flight Standards Service, General Aviation and Commercial Division (AFS–800), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 907–271–2034, or 202–267–8212.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–18904 appearing on page 51162 in the **Federal Register** of Wednesday, August 18, 2004, which corrected an amendment to § 91.319, in the **DATES** caption, ''The regulation is effective September 4, 2004'' is corrected to read ''The regulation is effective September 1, 2004.''

Issued in Washington, DC, on August 27, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–19936 Filed 8–27–04; 1:33 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–105]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Route 82 Bridge, mile 16.8, across the Connecticut River at East Haddam, Connecticut. This deviation from the regulations allows the bridge to open every two hours on the odd hour, from August 17, 2004, through October 15, 2004. The bridge shall open on signal at all times for commercial vessels after at least a two-hour advance notice is given. This deviation is necessary in order to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from August 17, 2004, through October 15, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Route 82 Bridge, at mile 16.8, across the Connecticut River has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(c).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate maintenance repairs at the bridge.

This deviation to the operating regulations allows the Route 82 Bridge to open every two hours on the odd hour, from August 17, 2004, through October 15, 2004. The bridge shall open on signal at all times for commercial vessels after at least a two-hour advance notice is given.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 24, 2004.

David P. Pekoske,

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

[FR Doc. 04–19959 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0006, FRL–7808–4]

RIN 2060–AK32

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 12, 2001, the EPA issued national emission standards for hazardous air pollutants for solvent extraction for vegetable oil production (Vegetable Oil Production NESHAP) under section 112 of the Clean Air Act (CAA). This action will amend the compliance requirements for vegetable oil production processes that exclusively use a qualifying low-hazardous air pollutants (HAP) extraction solvent. The amendments are being made to require only the necessary recordkeeping and reporting requirements for facilities using the low-HAP extraction solvent compliance option. We are making the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule is effective on November 1, 2004 without further notice, unless EPA receives adverse written comment by October 1, 2004 or if a public hearing is requested by September 13, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0006. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. See the Proposed Rules section in this **Federal Register** for the proposed rule which contains more information.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, U.S. EPA, Waste and Chemical Processes Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3078, facsimile number (919) 541–3207, electronic mail address: *nizich.greg@epa.gov.* Questions regarding the applicability of this action to a particular entity should be directed to the appropriate EPA Regional Office representative.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a ''regulated entity.'' Categories and entities potentially regulated by this action include:

Category	SIC code	NAICS	Examples of regulated entities
Industry	2074	311223	Cottonseed oil mills.
	2075	311222	Soybean oil mills.
	2076	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2079	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2048	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	2041	311211	Flour and other grain mill product mills.
	2046	311221	Wet corn milling.
Federal government			Not affected.
State/local/tribal government			Not affected.

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 40 CFR part 63, subpart GGGG. If you have any questions regarding the applicability of this action to a particular entity, consult the individual described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We consider the changes to be noncontroversial because the only effect is to eliminate recordkeeping and reporting that is unnecessary for determining compliance for facilities using a low-HAP extraction solvent in the production process. Compliance with the rule is assured merely by properly documenting use of the low-HAP extraction solvent. In the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to make the amendments to the Vegetable Oil Production NESHAP set forth in the direct final rule in the event that timely and significant adverse comments are received.

If we receive any relevant adverse comments on the amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in today's rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 1, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was 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 direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading this preamble to the direct final rule.

I. Background
II. Technical Amendment to the Solvent Extraction for Vegetable Oil Production NESHAP
  A. How are compliance requirements being revised for low-HAP extraction solvent operations?
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Congressional Review Act

I. Background

On April 12, 2001, the **Federal Register** published EPA's National Emission Standards for Hazardous Air Pollutants for Solvent Extraction for Vegetable Oil Production (Vegetable Oil Production NESHAP), 40 CFR part 63, subpart GGGG (66 FR 19006). The NESHAP contains regulatory provisions for documenting certain parameters in the vegetable oil production process: oilseed use and solvent use, HAP content of the solvent, and determining compliance based on a ratio of actual versus allowable HAP loss for the applicable types of oilseeds. Today's direct final rule amendments eliminate the recordkeeping and reporting requirements that are unnecessary for determining compliance at vegetable oil production facilities that exclusively use a qualifying low-HAP extraction solvent.

II. Technical Amendment to the Vegetable Oil Production NESHAP

The Vegetable Oil Production NESHAP require that certain parameters be documented and that actual versus allowable HAP use be compared to determine compliance. Today's direct final amendment specifies, only for facilities that use a low-HAP extraction solvent, the recordkeeping and reporting requirements necessary to assure compliance with the NESHAP.

A. How Are Compliance Requirements Being Revised for Low-HAP Extraction Solvent Operations?

When we promulgated the Vegetable Oil Production NESHAP, the rule required compliance to be demonstrated by calculating a compliance ratio that was a comparison of the actual versus allowable amount of HAP loss from the production process. Determination of the compliance ratio required the facility owner or operator to document, on a monthly basis, the following parameters in the solvent extraction process: the quantity of each type of oilseed used, the quantity of solvent loss, and the volume fraction of each HAP exceeding 1 percent in the extraction solvent used. By inputting this information into the equations in the rule, the compliance ratio, and thus compliance, is determined. If the facility's compliance ratio is one or less, the facility is in compliance. During the approximately 3 year period since the NESHAP were promulgated, a solvent has been developed where none of the HAP constituents are present in an amount greater than 1 percent by volume. We refer to this solvent as ''low-HAP extraction solvent.'' The extraction solvent available until recently, and the one the equations in the NESHAP are based on, was comprised of, on average, 64 percent HAP, primarily n-hexane. When facilities using a low-HAP extraction solvent determine their compliance ratio in accordance with the equations in the NESHAP, the result will always be zero. This is true because the volume fraction of each HAP comprising more than 1 percent in the extraction solvent used is zero. Since a facility with a compliance ratio below one is in compliance, any facility with a compliance ratio of zero will always be in compliance with the NESHAP. Neither quantity and/or type of oilseed processed, nor the amount of solvent loss, has any bearing on the compliance determination. Therefore, it is no longer necessary to measure these production-related parameters to determine compliance. The direct final

amendment adds language to 40 CFR 63.2840 specifying that, for facilities using the low-HAP extraction solvent in their processes, we are requiring only the necessary recordkeeping and reporting requirements to assure that the solvent used meets the low-HAP criteria.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards 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 entitlement, 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, it has been determined that the amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in subpart GGGG were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060–0433. Today's action does not impose any new information collection requirements on industry or EPA. For that reason, we have not revised the ICR for the Vegetable Oil Production NESHAP.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA has determined that the amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's technical amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities. The direct final rule amendments will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potential affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule amendments.

E. Executive Order 13132: Federalism

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

The direct final amendments do not have federalism implications. The amendments only clarify a compliance option and eliminate unnecessary recordkeeping and reporting requirements for that option. This change does not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. The technical amendments will not have new 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. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Government

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The direct final rule amendments do not have tribal implications as specified in Executive Order 13175. They would 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 direct final rule amendments.

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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets 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 direct final rule amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy, Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 13211.

I. National Technology Transfer and Advancement Act

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of 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 GGGG—[Amended]

■ 2. Section 63.2840 is amended by adding introductory text and adding paragraphs (e) and (f) to read as follows:

§ 63.2840 What emission requirements must I meet?

For each facility meeting the applicability criteria in § 63.2832, you must comply with either the requirements specified in paragraphs (a) through (d), or the requirements in paragraph (e) of this section.

(a)(1) * * *

(e) *Low-HAP solvent option.* For all vegetable oil production processes subject to this subpart, you must exclusively use solvent where the volume fraction of each HAP comprises 1 percent or less by volume of the solvent (low-HAP solvent) in each delivery, and you must meet the requirements in paragraphs (e)(1) through (5) of this section. Your vegetable oil production process is not subject to the requirements in §§ 63.2850 through 63.2870 unless specifically referenced in paragraphs (e)(1) through (5) of this section.

(1) You shall determine the HAP content of your solvent in accordance with the specifications in § 63.2854(b)(1).

(2) You shall maintain documentation of the HAP content determination for each delivery of the solvent at the facility at all times.

(3) You must submit an initial notification for existing sources in accordance with § 63.2860(a).

(4) You must submit an initial notification for new and reconstructed sources in accordance with § 63.2860(b).

(5) You must submit an annual compliance certification in accordance with § 63.2861(a). The certification should only include the information required under § 63.2861(a)(1) and (2), and a certification indicating whether the source complied with all of the requirements in paragraph (e) of this section.

(f) You may change compliance options for your source if you submit a notice to the Administrator at least 60 days prior to changing compliance options. If your source changes from the low-HAP solvent option to the compliance ratio determination option, you must determine the compliance ratio for the most recent 12 operating months beginning with the first month after changing compliance options.

* * * * *

[FR Doc. 04–19919 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP–2003–0169; FRL–7352–3]

RIN 2070–AC93

Pesticide Worker Protection Standard; Glove Liners, and Chemical-Resistant Glove Requirements for Agricultural Pilots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the 1992 Pesticide Worker Protection Standard to permit optional use of separable glove liners beneath chemical-resistant gloves. This amendment also makes optional the provision that agricultural pilots

wear gloves when entering or leaving aircraft. All other provisions of the Worker Protection Standard are unaffected by this rule. EPA believes that these changes will reduce the cost of compliance and will increase regulatory flexibility without increasing potential risks.

DATES: This final rule is effective on November 1, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID number OPP–2003–0169. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Donald Eckerman, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5062; fax number: 703–305–2962; e-mail address: *eckerman.donald@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural employer, including an employer in a farm as well as a nursery, forestry, or greenhouse establishment, who is subject to the Worker Protection Standards. Potentially affected entities may include, but are not limited to:

- Greenhouse, nursery, and floriculture production, NAICS 111, i.e., industries growing crops mainly for food and fiber (farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds).
- Support activities for agriculture and forestry, NAICS 115, i.e., agricultural employers (farms).
- Timber tract operations, NAICS 1131, i.e., establishments primarily engaged in the operation of timber tracts for the purpose of selling standing timber.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 170. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 170 is available at E-CFR Beta Site Two at*http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

This action amends the pesticide Worker Protection Standard at 40 CFR 170.112 and 170.240 to permit optional use of separable glove liners beneath chemical-resistant gloves and to make optional the wearing of gloves by agricultural pilots when entering or leaving aircraft. In both cases, the pesticide product labeling may specify otherwise. All other provisions of the Worker Protection Standard are unaffected by this rule.

B. What is the Agency's Authority for Taking this Action?

This final rule is issued under the authority of section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136–136y, in order to carry out the provisions of FIFRA, including FIFRA section 3, 7 U.S.C. 136a.

C. What did the Agency Propose?

In the **Federal Register** of September 9, 1997 (62 FR 47543) (FRL–5598–9), EPA proposed two changes to the Worker Protection Standard (WPS) for agricultural pesticides. The first proposed change would allow separable glove liners to be worn beneath chemical-resistant gloves. The second change EPA proposed was to delete the requirement (40 CFR 170.240(d)(6)(i)) that pilots must wear chemical-resistant gloves when entering and leaving aircraft used to apply pesticides. All other Worker Protection Standard provisions concerning glove liners and chemical-resistant gloves were unaffected by this proposal. The Agency believed that these proposed changes would reduce the costs of compliance and increase regulatory flexibility without increasing potential risks.

III. Comments

Comments on the two major provisions of the proposed amendment, the use of separable glove liners and the wearing of gloves when entering or exiting aircraft, are discussed below.

A. Separable Glove Liners

EPA proposed to allow agricultural workers to wear separable glove liners beneath their chemical-resistant gloves. The decision to use separable glove liners was to be at the discretion of the pesticide user and chemical-resistant gloves could continue to be used without liners. EPA's proposal contained restrictions to assure that contaminated liners would not remain in use. To assure that contaminated liners were not reused, all liners would have to be discarded immediately after 8 hours of use within any 24–hour period and liners could not be laundered and reused. The glove liners could not be any longer than the chemical-resistant gloves under which they are worn to prevent absorption of pesticides. The glove liners that came into contact with pesticides would have to be discarded immediately and replaced with new liners. Discarding glove liners immediately is necessary to ensure that contaminated gloves are not reused, accidentally or otherwise.

Of the 12 individuals and organizations who commented specifically on this particular proposal, 10 strongly supported the change. These supporters included agricultural employers and their representative organizations, members of the lawn care industry, State departments of agriculture, academic researchers, and the National Institute for Occupational Safety and Health (NIOSH).

In its comments, NIOSH agreed with EPA that permitting workers to wear glove liners under their chemical-resistant gloves should result in increased compliance with the standards and decreased exposure to pesticides. NIOSH commented further that permitting workers to wear glove liners might also reduce the risk of

allergic reactions to certain glove materials.

In general, the supporters of the Agency's proposal said that workers often do not wear chemical-resistant gloves because of the discomfort they experience. Several testified to witnessing the discomfort that can result from the wearing of unlined chemical-resistant gloves. The major discomfort is profuse sweating in the summer and extreme cold during cooler months. One commenter cited his experiences with workers who had developed severe hand dermatitis as a result of wearing chemical-resistant gloves without liners. This commenter also stated that he believed that EPA's prohibition against the use of separable glove liners was increasing the incidence of dermatitis.

Several of the commenters in support of glove liners requested the option of reusable liners that could be laundered. Other commenters stated their support for disposable liners as contained in the proposal. Two of the commenters requested that liner use be extended to 10 hours from the proposed 8 hours, but with discarding still required at the end of a 24–hour period. These commenters were the Hawaii Agriculture Research Center, which represents farmers who grow and harvest sugar on about 70,000 acres in Hawaii, and the Hawaiian Commercial & Sugar Company, Hawaii's largest producer of raw sugar, accounting for more than 60% of all of the State's sugar and producing more than 200,000 tons of raw sugar annually. Both stated that their industry workers often have shifts up to 10 hours and believed no benefit was derived from requiring an extra set of liners for an extra 2 hours of use.

EPA believes that the request to extend glove use in a given 24–hour period from 8 to 10 hours is reasonable. It was the intention of the proposed rule to permit the use of separable glove liners for the duration of the shift, but also to ensure that glove liners were discarded at the end of a shift or when contaminated. Comments were received indicating that shifts can be up to 10 hours long. In light of the proposed requirement that glove liners be replaced when contaminated, the fact that a shift may be 10 hours long rather than 8 hours should not lead to the use of contaminated gloves in the period beyond 8 hours. Thus, to require employers utilizing shifts slightly in excess of 8 hours to replace gloves during that period, when no contamination has occurred, is an unnecessary burden with no significant increase in worker protection, and would respond to no added risk of concern.

Two comments addressing the glove liner proposal were not in favor of permitting the use of liners. One comment, submitted jointly by the Farmworker Justice Fund, Inc., the Farmworker Association of Florida, the Migrant Farmworker Justice Project, the Teamsters Local 890, and California Rural Legal Assistance Foundation (the ''Farmworker Comment''), argued that the use of glove liners could negatively affect worker dexterity, that liners would not substantially increase worker comfort, and that the proposed limitations on use of gloves after contamination or a specified time period would be difficult for lay people to follow, difficult to enforce, and unlikely to be observed. This comment also took issue with the use of personal protective equipment (PPE) generally. The second comment, submitted by a private citizen, stated that the necessary research had not been done on this issue prior to publication of the proposed amendment. The commenter did not, however, identify what additional research would have been useful.

EPA, however, agrees with commenters who supported the view that permitting use of comfortable glove liners will increase the overall use of chemical-resistant gloves. Several commenters pointed out that workers are more likely to comply with the requirement to wear chemical-resistant gloves if separable glove liners are included. Those finding that glove liners are not useful, are uncomfortable, limit dexterity, or have other non-risk related negative consequences may continue to use unlined chemical-resistant gloves. EPA believes that permitting reusable glove liners with a laundering requirement would be difficult to enforce and would not assure the desired degree of protection. Specifically, it would be difficult, if not impossible, to ascertain when gloves had been laundered. Further, permitting re-use of glove liners, even if laundered, would not ensure adequate protection. The Agency feels that re-laundered liners are not sufficiently protective, because there is no certainty that laundering a glove liner would remove all contaminants. Information reviewed by the Agency indicates that, although careful laundering has the potential to reduce pesticide residue levels on gloves, it can be difficult to eliminate pesticide residues from gloves, even after repeated washing. EPA believes that disposable glove liners assure that the worker has a non-contaminated liner and does not place an undue financial burden on the employers. Disposable glove liners are inexpensive and readily available. In EPA's experience and based on its judgment, worker comfort and dexterity are improved and workers are more likely to comply with the requirement to wear chemical-resistant gloves if there is an option to wear comfortable separable glove liners with them.

EPA does not believe that more research is necessary regarding this issue prior to the adoption of the modification. EPA also disagrees with the view that questions over the broader issue of whether to require PPE at all support denying the option to use disposable glove liners, which would facilitate the use of chemical-resistant gloves, a form of PPE that is in fact required by current regulations. Finally, EPA does not believe that the requirement to replace glove liners after contamination or a specified time of use would be difficult to enforce. On the contrary, enforcement could be readily effectuated through on-site inspection. Moreover, those encountering difficulty with the timely replacement of glove liners could always choose the option of not using liners at all.

After careful consideration of comments from the Hawaii Agriculture Research Center and the Hawaiian Commercial & Sugar Company discussed above, EPA is adopting the original proposal with the modification that glove liners can be used for up to 10 hours in a 24–hour period. This revision is consistent with EPA's original intent to limit use of individual glove liners to a single shift. The provisions of the proposal requiring disposal of glove liners at the end of a 24–hour period and in the event of contamination are being retained in the final rule. Additionally, EPA has added language that contaminated glove liners must be disposed of in accordance with Federal, State, or local regulations.

B. Pilots Entering or Exiting Airplane

EPA proposed to remove the requirement that pilots of aircraft applying pesticides wear gloves when entering or exiting the cockpit. Comments were received from the National Agricultural Aviation Association, Agricultural Retailers Association, aerial application firms, growers, and state officials in support of the proposal to permit agricultural aviators to enter or exit the cockpit of aircraft without chemical-resistant gloves. The major point made by the commenters in favor of the proposal was that the introduction of contaminated gloves into the confined area of the cockpit would create a hazard far in excess of any hazard caused by the

minimal hand contact with the aircraft occurring when entering or exiting the cockpit. Also mentioned by the National Agricultural Aviation Association and some individual agricultural aviators was the use of gloves by pilots when adjusting spray equipment. This appropriate use of gloves can result in significant pesticide residues on the gloves. Therefore, gloves used by pilots should not be assumed to be lightly used and thus free of significant pesticide residues. Ideally, gloves that have been worn to perform pesticide-related tasks outside the airplane should be discarded, but if they are brought into the cockpit, they must be stored in an enclosed container to prevent contamination of the inside of the cockpit, as stated in the current regulation. As long as gloves brought into the cockpit are stored properly, they should generally present no risk of concern.

Two commenters did not support this proposal. The Farmworker Justice Fund, Inc. stated that the body of the aircraft becomes contaminated with pesticides and that the wearing of gloves when entering or exiting the aircraft was a minor burden. The second commenter, an individual, did not believe EPA had adequately established its case that the potential for contamination was minimal.

EPA agrees with commenters that requiring pilots to wear gloves when entering and exiting the cockpit is unnecessary in typical situations. Our experience with chemical risk assessments and regulations since the implementation of the worker protection standard, e.g., in conjunction with the registration and reregistration programs, indicates that not wearing gloves when entering and exiting the cockpit does not present a risk of concern. Since before proposal of this rule in 1997, the Agency has been performing risk assessments assuming that no gloves were worn when entering the cockpit. These risk assessments were performed on chemicals with a wide variety of toxicological characteristics throughout both the registration process and under the Agency's pesticide reregistration program and have not identified concern for exposure at the levels evaluated without gloves. Consequently, EPA has concluded that there is not a routine need for pilots to wear gloves when entering and exiting the cockpit. The Agency may, however, determine on a case-by-case basis that some pesticide/use combinations could trigger the need for gloves or the need to prohibit the use of gloves when entering or exiting the cockpit. The Agency expects that such determinations would be followed by requirements to revise product labeling.

The amended regulation does not require agriculture aviators to wear gloves when entering or exiting an aircraft. The option of whether to wear gloves is at the discretion of the pilot, subject to the Agency's authority, as stated above, to determine on a case-by-case basis when the use of gloves should be required or prohibited on the pesticide product labeling. The Agency emphasizes that today's action is not intended to alter the requirement of 40 CFR 170.240 for wearing gloves during loading, mixing, and other pesticide-handling operations associated with aircraft used to apply pesticides.

IV. Final Rule

After considering the comments received in response to the proposed rule, the Agency is issuing this final rule because EPA believes that these changes will reduce the costs of compliance and will increase regulatory flexibility without increasing potential risks. Only two modifications to the original proposal have been made: (1) To allow glove liners to be used for up to 10 hours in a 24–hour period, rather than the 8 hours in the proposed rule; and (2) to add language that contaminated gloves must be disposed of in accordance with Federal, State, or local requirements.

V. FIFRA Review Requirements

In accordance with FIFRA section 25(a), this final rule was submitted to the FIFRA Scientific Advisory Panel (SAP), the Secretary of the U.S. Department of Agriculture (USDA), and appropriate Congressional Committees. The SAP has waived its review of this final rule, and no comments were received from USDA or any of the Congressional Committees.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB) because it does not meet any of the criteria in section 3(f) of the Executive Order. The option provided under this rule is intended to provide a reduced burden alternative to the existing requirement. As such, if utilized it is not expected to increase requirements which would increase costs to any person.

An economic analysis was not performed for this rule because the Agency determined that because the rule is not a ''significant regulatory action,'' performing an economic analysis would involve considerable time and resources and would not add measurable value to the decisionmaking process involved in this rulemaking.

B. Paperwork Reduction Act

This action does not contain any information collection requirements which require approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. EPA has determined that this regulatory action

does not impose any adverse economic impacts on any small entities because this rule provides regulatory relief and regulatory flexibility. In addition, if utilized by a business, the implementation of the one option for glove liners would not constitute a significant cost to anyone, small or large.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The costs associated with this action are described in the Executive Order 12866 section, above. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This 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 governments specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this final rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175.

G. Executive Order 13211

This final rule is not subject to Executive Order 13211, *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not designated as an ''economically significant'' regulatory action as defined by Executive Order 12866, nor is it likely to have any significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this final rule because this action is not designated as an ''economically significant'' regulatory action as defined by Executive Order 12866 (see Unit XI.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. This final rule does not impose any technical standards that would require EPA to consider any voluntary consensus standards.

J. Executive Order 12898

This rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. References

1. Memorandum dated January 26, 2004 from Jeffrey L. Dawson, Chemist/Risk Assessor, and Jeff Evans, Biologist, Health Effects Division, EPA to Nancy Vogel, Field and External Affairs Division, EPA.

2. Stone, Janis F. and Wendy Wintersteen, ''Learn About Pesticides and Clothes,'' Fact Sheet Pm-1265f, 1992, p. 1 (Iowa State University Extension, Ames, IA). Available electronically at *http//: www.extension.iastate.edu/Publications/PM1265f.pdf*.

3. Stone, Janis F., ''Understand Label Precautions,'' Fact Sheet Pm-1663a, 2000, p. 2 (Iowa State University Extension, Ames, IA). Available electronically at*http://www.extension.iastate.edu/Publications/PM1663A.pdf*.

4. Stone, Janis F., ''Wear the Right Gloves,'' Fact Sheet Pm-1663c, 2000, p. 1 (Iowa State University Extension, Ames, IA). Available electronically at *http://www.extension.iastate.edu/Publications/PM1663C.pdf*.

5. Stone, Janis F., ''Keep Gloves Handy for Pesticide Work,'' Fact Sheet Pm-1518e, 2002, p. 2 (Iowa State University Extension, Ames, IA). Available electronically at*http://www.extension.iastate.edu/Publications/PM1518e.pdf*.

6. Gianato, Susan, ''Laundering Pesticide-Contaminated Clothing,'' publication WL-315, 1996, (West Virginia University, Extension Service, Morgantown, WV). Available electronically at *http://www.wvu.edu/exten/infores/pubs/fypubs/WL315.pdf*.

7. Handle Pesticide-Stained Clothes with Care, 2001, (University of Illinois Extension, Urbana- Champaign). Available electronically at*http://www.extension.uiuc.edu/cfe/*.

8. Montana State University, Bozeman, ''Laundering Pesticide Contaminated Clothing,'' p. 1. Available electronically at *http://scarab.msu.montana.edu/extension/MT__laundering.htm*.

List of Subjects in 40 CFR Part 170

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and

health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Michael O. Leavitt,

Administrator.

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

PART 170—[AMENDED]

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136a, 136w.

■ 2. Section 170.112 is amended by revising paragraph (c)(4)(vii) to read as follows:

§ 170.112 Entry restrictions.

* * * * *

(c) * * *

(4) * * *

(vii)(A) Gloves shall be of the type specified on the pesticide product labeling. Gloves made of leather, cotton, or other absorbent materials must not be worn for early-entry activities, unless gloves made of these materials are listed as acceptable for such use on the product labeling. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, leather gloves may be worn on top of chemical-resistant gloves. However, once leather gloves have been worn for this use, they shall not be worn thereafter for any other purpose, and they shall only be worn over chemical-resistant gloves.

(B) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(C) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

* * * * *

■ 3. Section 170.240 is amended by revising paragraphs (c)(5) and (d)(6)(i) to read as follows:

§ 170.240 Personal protective equipment.

* * * * *

(c) * * *

(5)(i) Gloves shall be of the type specified on the pesticide product labeling. Gloves made of leather, cotton, or other absorbent materials may not be worn while mixing, loading, applying, or otherwise handling pesticides, unless gloves made of these materials are listed as acceptable for such use on the product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners shall not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

* * * * *

(d) * * *

(6) *Aerial application*—(i) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

* * * * *

[FR Doc. 04–19923 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 90–571 and 98–67; FCC 04–137]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses cost recovery and other matters relating to the provision of telecommunications relay services (TRS) pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA). This document is intended to improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.

DATES: Effective October 1, 2004 except for the amendment to § 64.604 (a)(4) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due November 1, 2004. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L._LaLonde@omb.eop.gov,* or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Governmental Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY), or e-mail *Cheryl.King@fcc.gov.* For additional information concerning the PRA information collection

requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *This Report and Order, Order on Reconsideration* contains new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. *The Report and Order* addresses issues arising from *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Cost Recovery Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* (*TRS Cost Recovery MO&O & FNPRM*), CC Docket No. 98–67, FCC 01–371, 16 FCC Rcd 22948, December 21, 2001; published at 67 FR 4203, January 29, 2002 and 67 FR 4227, January 29, 2002; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Further Notice of Proposed Rulemaking,* (*IP Relay Declaratory Ruling & FNPRM*), CC Docket No. 98–67, FCC 02–121, 17 FCC Rcd 7779, April 22, 2002; published at 67 FR 39863 , June 11, 2002 and 67 FR 39929, June 11, 2002; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order and Notice of Proposed Rulemaking,* (*Second Improved TRS Order & NPRM*), CC Docket 98–67,CG Docket 03–123, FCC 03–112, 18 FCC Rcd 12379, June 17, 2003; published at 68 FR 50973, August 25, 2003 and 68 FR 50993, August 25, 2003; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* (*VRS Waiver Order*), CC Docket 98–67, DA 01–3029, 17 FCC Rcd 157, December 31, 2001; *Sprint Petition for Declaratory Ruling,* (*711 Petition*), CC Docket 98–67, filed May 27, 2003; *Hands on Sign Language Services, Inc., Application for Certification as an Eligible VRS Provider, Request for Expedited Processing and Request for Temporary Certification During Processing* (*Hands on Application*), CC Docket 98–67, filed August 30, 2002; and *Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief,* (*CSD Petition*), CC Docket 98–67, filed June 12, 2003. The *Order on Reconsideration* resolves petitions filed against the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* (*Bureau TRS Order*), CC Docket 98–67, DA 03–2111, 18 FCC Rcd 12823, June 30, 2003; *Second Improved TRS Order & NPRM;* and the *Telecommunications Relay Services and the Americans with Disabilities Act of 1990,* (*Coin Sent-Paid Fifth Report and Order*), CC Docket 90–571, FCC 02–269, 17 FCC Rcd 21233, October 25 2003; published at 68 FR 6352, February 7, 2003 and 68 FR 8553, February 24, 2003. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This *Report and Order, Order on Reconsideration* can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Paperwork Reduction Act of 1995 Analysis

This *Report and Order, Order on Reconsideration* contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Report and Order, Order on Reconsideration* as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due November 1, 2004. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how to Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the effects of the new rule changes that clarify many of the current requirements for TRS providers which impose new and/or modified reporting requirements for TRS providers, and find that most TRS providers are not small entities, and are either interexchange carriers or incumbent local exchange carriers, with very few exceptions. The Commission refrained from requiring features such as interrupt functionality and talking return call because comments expressed concern that such features might be cost prohibitive, and might be unduly burdensome to the TRS provider and the TRS user. This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation. Because such cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens are thereby imposed on smaller entities.

Synopsis

In this *Report and Order, Order on Reconsideration,* the Commission addresses cost recovery and other matters relating to the provision of telecommunications relay services (TRS) pursuant to Title IV of the Americans with Disabilities Act of 1990 (ADA). *The Report and Order* addresses: (1) Cost recovery issues arising from the *TRS Cost Recovery MO&O &FNPRM;* (2) cost recovery issues arising from the *IP Relay Declaratory Ruling & FNPRM;* (3) issues arising from the Notice of Proposed Rulemaking contained in the *Second Improved TRS Order & NPRM;* (4) petitions seeking extension of the waivers set forth in the *VRS Waiver Order;* (5) the *711 Petition;* (6) the petition by a provider of VRS for ''certification'' as a TRS provider eligible to receive compensation from the Interstate TRS Fund; and (7) the petition for limited waiver concerning Video Relay Service (VRS) and interpreting in state legal proceedings. The *Order on Reconsideration* addresses petitions for reconsideration of three TRS matters: (1) the petitions for reconsideration of the June 30, 2003 *Bureau TRS Order* with respect to the per-minute compensation rate for VRS; (2) the *Second Improved TRS Order & NPRM;* and (3) the *Coin Sent-Paid Fifth Report & Order*.

Final Regulatory Flexibility Analysis (CG Docket No. 03–123)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), (*see* 5 U.S.C. 603; the RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 14–121, Title II, 110 Statute 857 (1996)), an Initial Regulatory Flexibility Analysis (*IRFA*) was incorporated in the notice of proposed rulemaking (*NPRM*) to which this *Report and Order* responds. *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98–67, CG Docket No. 03–123, FCC 03–112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order & NPRM*). The Commission sought written public comment on the proposals in the NPRM section of the *Second Improved TRS Order & NPRM,* including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604. We also expect that we could certify the *Report and Order* under 5 U.S.C. 605 because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there are not a substantial number of small entities that may be affected by our action.

Need for, and Objective of, This Report and Order

This proceeding was generally initiated to establish technological advancements that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. This proceeding would ensure compliance with the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

The Commission issued the *NPRM* in the *Second Improved TRS Order & NPRM* to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of TRS users. In doing so, the Commission sought to enhance the quality of TRS and broaden the potential universe of TRS users, consistent with Congress's direction under 47 U.S.C. 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. The Commission sought comment on: (1) Whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements were necessary for ensuring the security of IP Relay transmissions; (3) how TRS facilities might determine the appropriate PSAP to call when receiving an emergency 711 call via a wireless device; (4) whether wireless carriers should be required to transmit Phase I or Phase II E–911 information to TRS facilities; (5) whether certain additional features, services, or requirements should be required, namely non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, LEC offerings, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (6) issues concerning increasing public access to information and outreach; and (7) procedures for determining eligibility payments from the Interstate TRS Fund. The intent of the proposed rules is to improve the overall effectiveness of TRS, and to improve the Commission's oversight of certified state TRS programs and our ability to compel compliance with the federal mandatory minimum standards for TRS.

In this *Report and Order,* the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. First, the Commission adopts the per minute reimbursement methodology for IP Relay. Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC. Third, the Commission grants VRS waiver requests of the following TRS mandatory minimum requirements: (1) Types of calls that must be handled; (2) emergency call handling; (3) speed of answer; (4) equal access to interexchange carriers; (5) pay-per-call services; (6) voice initiated calls—VCO and HCO; (7) provision of STS and Spanish Relay. Fourth, the Commission amends the definition of ''711'' by deleting the words ''all types of'' from the definition, in order to clarify its meaning. Fifth, in the *Order on Reconsideration,* the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay and STS that were established in the *Bureau TRS Order. See Bureau TRS Order.* The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order.* Sixth, the Commission has amended the definition for an ''appropriate'' PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. These amended and new rules will improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress. No changes were made to the following items proposed in the *NPRM:* (1) Whether, in times of emergency, TRS services should be made available on the same basis as telephone services for the general public, and whether the Commission's rules should be amended to provide for continuity of operation for TRS facilities in the event of an emergency; (2) whether additional requirements are necessary for ensuring the security of IP Relay transmissions; (3) whether wireless carriers should be required to transmit Phase I or Phase II E–911 information to TRS facilities; (4) whether certain additional features, services or requirements should be required for non-shared language TRS, speed of answer and call set-up times for the various forms of TRS, use of communication access real-time translation (CART), interrupt functionality, talking return call, speech recognition technology, improved transmission speeds, and additional TTY protocols; (5) issues concerning increasing public access to information and outreach; and (6) procedures for determining eligibility payments from the Interstate TRS Fund.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed directly in response to the *IRFA* in this proceeding. Furthermore, no small business issues were raised in the comments. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on at least one small entity that is a TRS provider. Accordingly, in consideration of this small entity and other small entities that may be similarly situated, we issue this final regulatory flexibility analysis rather than issue a final regulatory flexibility certification.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(a)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4).

Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Aug. 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately 1,032 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's. Therefore, the majority of entities in these categories are small entities.

Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 261 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 223 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity under the applicable size standard. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI (WorldCom), for example, provides TRS in only a few states but is not a small business. Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Reporting and Recordkeeping. This *Report and Order* may involve new mandatory reporting requirements. First, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred

call-forwarding to the extent that such features are provided by the subscriber's LEC and the TRS facility possesses the necessary technology to pass through the subscriber's Caller ID information to the LEC. However, the Commission does not adopt specific requirements for the functionality of these features. We anticipate that TRS providers will offer these features to the extent, and in a manner, that is best suited to their facilities. Second, the Commission granted waiver requests of the Commission's mandatory minimum standards for VRS, providing that VRS providers submit annual reports to the Commission. The report must be in narrative form detailing; (1) the provider's plan or general approach to meeting the waiver standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standard; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. The report may be combined with the existing VRS/IP Relay reporting requirements scheduled to be submitted annually to the Commission on April 16th of each year. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

Other Compliance Requirements. The rules adopted in this *Report and Order* require that TRS facilities route emergency TRS calls to either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner to the designated PSAP to which a direct voice call from a non-TRS number would be delivered. Furthermore, the rules require that TRS facilities provide certain technological features including: anonymous call rejection, call screening, and preferred call-forwarding. These rules will affect TRS providers. All such compliance requirements will affect small and large entities equally, with no arbitrary, unfair or undue burden for small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c)(1)–(c)(4).

One of the main purposes of this *Report and Order* and *Order on Reconsideration* is to clarify many of the current requirements for TRS providers. The *Report and Order* and *Order on Reconsideration* impose new and/or modified reporting requirements for TRS providers. In addition, they impose new service requirements. Because these new service requirements are similar to services currently being offered, the Commission expects a minimal impact on small business. First, the Commission permanently adopts the per minute reimbursement methodology for IP Relay. The per-minute reimbursement methodology simplifies the compliance and reporting requirements for small entities by permanently adopting the interim methodology. Second, the Commission requires that TRS providers offer anonymous call rejection, call screening, and preferred call-forwarding to the extent that such features are provided by the subscriber's LEC and to the extent that the TRS facility will possess the necessary technology to pass through the subscriber's Caller ID information to the LEC. This new requirement does not adversely impact small business entities because these features are only required where it is technologically feasible to do so; the Commission does not require providers to purchase new equipment or upgrade their equipment to accommodate these new requirements. Third, the Commission grants waiver requests of several TRS mandatory minimum requirements for VRS service. These standards were waived because the Commission determined that they were either technologically infeasible, extremely difficult to comply with given the infancy of the service, or they were more closely related to verbal communication, as opposed to a visual service. Furthermore, these waivers consolidate the reporting requirements for providers, and ensure that VRS facilities are only responsible for those rules that are technologically feasible. Therefore, these waivers have no adverse impact on small businesses. Fourth, the Commission amends the definition of ''711'' by deleting the words ''all types of'' from the definition, in order to clarify its meaning. This rule clarifies the definition of 711, thereby simplifying the application of the rule for TRS providers. This clarification has no adverse impact on small entities but, on the contrary, will benefit all entities equally. Fifth, in the *Order on Reconsideration*, the Commission adopts the interim TRS compensation rates for traditional TRS, IP Relay, and STS for the 2003–2004 fund year that were established in the *Bureau TRS Order*, and are effective from June 30, 2003, through the June 30, 2004, end of fund year. The Commission also adopts a compensation rate for VRS that increases the interim rate established in the *Bureau TRS Order*; the new rate is effective from September 1, 2003, through June 30, 2004. The new VRS compensation rate was established after review of supplemental expense and service data filed with the TRS administrator. The per-minute reimbursement methodology takes into account the projected cost and demand data of all TRS providers for a given service. Therefore, it does not unduly burden small businesses. Sixth, the Commission has amended the definition for an ''appropriate'' PSAP to be either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner. The revision of this rule simplifies the ability of TRS providers to comply with the Commission's emergency call handling requirement for TRS. The revision has no adverse impact on small entities.

Currently, most TRS providers are not small entities, and are either interexchange carriers or incumbent local exchange carriers, with very few exceptions. The Commission refrained from requiring features such as interrupt functionality and talking return call because commenters expressed concern that such features might be cost prohibitive, and might be unduly burdensome to the TRS provider and the TRS user. This *Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation. Because such cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens are thereby imposed on smaller entities.

Report to Congress

The Commission will send a copy of the *Report and Order, Order on Reconsideration*, including this *FRFA*, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including this *FRFA*, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order, Order on Reconsideration* and *FRFA* (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, pursuant to the authority contained in sections 1,2, 4(i), 4(j), 201–205, 218, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 218, and 225, this *Report and Order, Order on Reconsideration are adopted*, and part 64 of Commission's rules is amended as set forth in the rule changes.

Hamilton's Petition for Waiver Extension *is granted* to the extent indicated herein.

Hands On's Petition for Waiver *is granted* to the extent indicated herein.

Sprint's Petition for Declaratory Ruling, CC Docket No. 98–67 (filed May 27, 2003) (*711 Petition*) *is granted* as provided herein.

Hands On's Application for Certification as an Eligible VRS Provider (filed August 30, 2002) (*Hands On Application*) *is dismissed* without prejudice.

Communication Services for the Deaf, Petition for Limited Waiver and Request for Expedited Relief, CC Docket 98–67 (filed June 12, 2003) (*CSD Petition*) *is denied* as provided herein.

The petitions of AT&T, CSD, Hands On, Sorenson, and Sprint for reconsideration of the *Bureau TRS Order* are denied.

The Interstate TRS Fund shall compensate VRS providers at the rate of $8.854 per completed interstate or intrastate conversation minute, which rate shall apply to the provision of eligible VRS services by eligible VRS providers effective September 1, 2003.

Interim per-minute compensation rates set forth in the *Bureau TRS Order* for traditional TRS, IP Relay, and STS are hereby adopted as the final compensation rates for such services for the period July 1, 2003, through June 30, 2004. These rates are $1.368 per completed interstate conversation minute for traditional TRS and per completed interstate or intrastate conversation minute for IP Relay; and $2.445 per completed interstate conversation minute for STS.

Except as otherwise specifically provided herein, the *Bureau TRS Order is affirmed.*

Petitions for reconsideration of *Telecommunication Relay Services and the Americans with Disabilities Act of 1990, Fifth Report and Order,* CC Docket No. 90–571, FCC 02–269, 17 FCC Rcd 21233 (Oct. 25, 2002) (*Coin Sent-Paid Fifth Report & Order*) *are denied* as provided herein.

Petitions for reconsideration of *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Second Report and Order,* CC Docket No. 98–67, FCC 03–112, 18 FCC Rcd 12379 (June 17, 2003) (*Second Improved TRS Order*) are granted to the extent indicated herein.

Amendments to §§ 64.601 through 64.605 of the Commission's rules *are adopted,* effective October 1, 2004 except § 64.604 (a)(4) of the Commission's rules which contains information collection requirement under the Paperwork Reduction Act (PRA), that are not effective until approved by Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order, Order on Reconsideration,* including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications, Individuals with disabilities, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.601 is amended by revising paragraph (1) to read as follows:

§ 64.601 Definitions.

* * * * *

(1) *711.* The abbreviated dialing code for accessing relay services anywhere in the United States.

* * * * *

■ 3. Section 64.604 is amended by revising paragraphs (a)(4), (c)(5)(iii)(B) and (c)(5)(iii)(I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to the nearest Public Safety Answering Point (PSAP). An appropriated PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject carrier must contribute at least $25 per year. Carriers whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a ''Telecommunications Reporting Worksheet'' (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an

officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer & Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

* * * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer & Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*See* 47 CFR 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*See* 47 CFR 52.16 of this chapter), and the long-term local number portability cost recovery (*See* 47 CFR 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

* * * * *

■ 4. Section 64.605 is amended by revising paragraph (a) to read as follows:

§ 64.605 State certification.

(a) *State documentation.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned ''TRS State Certification Application.'' All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

* * * * *

[FR Doc. 04–19955 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 01–75; FCC 02–298]

Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On November 13, 2002, the Commission released a Report and Order in the matter of Broadcast Auxiliary Service Rules. This document contains corrections to the final regulations that appeared in the **Federal Register** of March 17, 2003 (68 FR 12744). A ''correcting amendment'' also appeared in the **Federal Register** of July 22, 2004 (69 FR 43772).

DATES: Effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relate to Broadcast Auxiliary Service Rules under § 73.3598 of the rules.

Need for Correction

As published, the final regulations contain an error, which requires immediate correction.

List of Subjects in 47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

■ Accordingly, 47 CFR part 73 is corrected by making the following correcting amendment:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19894 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–00–7762 (HM–206C)]

RIN 2137–AD29

Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Interim Final Rule; extension of compliance date.

SUMMARY: This interim final rule extends the compliance date of the notification and record retention

requirements for aircraft operators transporting hazardous materials. On March 25, 2003 RSPA published a final rule that requires an aircraft operator transporting a hazardous material to assure that information on the hazardous material carried aboard the aircraft is available to emergency responders through sources other than the flight crew. This interim final rule extends the October 1, 2004 mandatory compliance date to April 1, 2005.

DATES: *Effective Date:* The effective date of these amendments is September 1, 2004.

Comments: Submit comments by October 1, 2004. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number RSPA 00–7762 (HM–206C)] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identifcation Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change, to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule under this docket (68 FR 14341) amending the Hazardous Materials Regulations to require an aircraft operator to: (1) Place a telephone number, that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft, on the notification of pilot-in-command or in the cockpit of the aircraft; (2) retain and provide upon request a copy of the notification of pilot-in-command, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and (3) make readily accessible, and provide upon request, a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed. Currently under the HMR, the notification and record retention requirements become mandatory on October 1, 2004.

On June 22, 2004 the Air Transport Association (ATA) requested that RSPA extend the compliance date from October 1, 2004 to April 1, 2005 to allow its member air carriers additional time to prepare for and implement these new requirements. ATA stated that most of its members have decided to automate the notification and record retention requirements of Docket HM–206C because automation will better serve the safety purposes of the rule. ATA goes on to say that automation requires extensive reprogramming of air carriers' existing systems as well as a significant initial investment of time and resources; that, once programming solutions are devised, they must be tested by the carrier over its nation-wide or world-wide system; and that air carriers must also develop training materials and train employees in the new applications and procedures. ATA states that delay of the compliance date will enable carriers to complete these preparations and achieve an orderly transition to the automated methods. RSPA agrees that delaying the compliance date on this rulemaking is in the public interest. Because there is insufficient time to provide an opportunity for public comment in response to a notice of proposed rulemaking, prior to the current mandatory compliance date in the HMR, we are publishing an interim final rule in which we are delaying the compliance date to April 1, 2005.

The Regulatory Policies and Procedures of DOT (44 FR 1134; February 29, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We will consider all comments received on or before the closing date for comments. We will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

II. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule amends a March 25, 2003 final rule by extending the compliance date for the notification and record retention requirements for air carriers transporting hazardous materials. The compliance date extension adopted in this final rule does not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the March 25, 2003 final rule.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rulemaking preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe

requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

The March 25, 2003 final rule addressed covered subject item (3) above and preempts State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of this final rule and not later than two years after the date of issuance. This interim final rule does not change the effective date of Federal preemption of the March 25, 2003 final rule, which was June 23, 2003.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule applies to businesses, some of whom are small entities, that transport hazardous materials by air. This final rule provides an extension of the compliance date for notification and record retention requirements for air carriers. The compliance date extension assures that air carriers have sufficient time to reprogram their systems to meet the new requirements, test the reprogrammed system, develop training materials and train their employees. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule does not impose new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

This final rule will improve emergency response to hazardous materials incidents involving aircraft by ensuring information on the hazardous materials involved in an emergency is readily available. Improving emergency response to aircraft incidents will reduce environmental damage associated with such incidents. We find there are no significant environmental impacts associated with this final rule.

I. Privacy Act

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

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

§ 171.14 [Amended]

■ 2. Amend § 171.14, paragraph (f), by removing the wording ''October 1, 2004'' and adding the wording ''April 1, 2005'' in both places it appears.

Issued in Washington, DC on August 18, 2004, under the authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 04–19963 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2004–17359]

RIN 2127–AJ27

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 2002 passenger motor vehicles that occurred in calendar year (CY) 2002. The final 2002 theft data indicate a decrease in the vehicle theft rate experienced in CY/MY 2002. The final

theft rate for MY 2002 passenger vehicles stolen in calendar year 2002 (2.49 thefts per thousand vehicles) decreased by 23.6 percent from the theft rate for CY/MY 2001 (3.26 thefts per thousand vehicles) when compared to the theft rate experienced in CY/MY 2001. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for CY 2002, the most recent calendar year for which data are available.

In calculating the 2002 theft rates, NHTSA followed the same procedures it used in calculating the MY 2001 theft rates. (For 2001 theft data calculations, *see* 68 FR 54857, September 19, 2003.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2002 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2002 vehicles of that line stolen during calendar year 2002 by the total number of vehicles in that line manufactured for MY 2002, as reported to the Environmental Protection Agency (EPA).

The final 2002 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2001. The final theft rate for MY 2002 passenger vehicles stolen in calendar year 2002 decreased to 2.49 thefts per thousand vehicles produced, a decrease of 23.6 percent from the rate of 3.26 thefts per thousand vehicles experienced by MY 2001 vehicles in CY 2001. For MY 2002 vehicles, out of a total of 225 vehicle lines, 38 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994.) Of the 38 vehicle lines with a theft rate higher than 3.5826, 34 are passenger car lines, three are multipurpose passenger vehicle lines, and one is a light-duty truck line.

On Tuesday, April 6, 2004, NHTSA published the preliminary theft rates for CY 2002 passenger motor vehicles in the **Federal Register** (69 FR 18010). The agency tentatively ranked each of the MY 2002 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency used written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the April 2004 notice. The agency received written comments from General Motors Corporation (GM) and Volkswagen of America, Inc. (VW).

In its comments, GM informed the agency that the Pontiac Grand Am was incorrectly listed as the ''Grant Am'' and the GMC Safari Van was incorrectly listed as the ''Safara Van.'' The final theft data has been revised to reflect the correct nomenclature for the Pontiac Grand Am and the GMC Safari Van.

GM also informed the agency that the production volume for the Chevrolet Cavalier, the Chevrolet Astro Van, and the Saturn VUE is incorrect. In response to this comment, the production volume for the Chevrolet Cavalier, the Chevrolet Astro Van, and the Saturn VUE has been reviewed and the final theft list has been revised to correct those production errors. As a result of the correction, the Chevrolet Cavalier previously ranked No. 30 with a theft rate of 3.9232 remains ranked at No. 30 with a theft rate of 3.8780. The Chevrolet Astro Van previously ranked No. 119 with a theft rate of 1.7072 is now ranked No. 120 with a revised theft rate of 1.7196. The Saturn VUE previously ranked No. 188 with a theft rate of 0.6073 is now ranked No. 189 with a revised theft rate of 0.5970. Additionally, GM informed the agency that the production volume for the General Motors Funeral Coach/Hearse was listed incorrectly. As a result of the agency's review, the new information provided by GM resulted in no change to the ranking or theft rate for this line. Additionally, further analysis of the data revealed the Funeral Coach/Hearse is a Cadillac Funeral Coach/Hearse. The theft rate list has been revised to reflect the correction in its nomenclature.

Further reanalysis of the theft rate data revealed that the Cadillac Limousine, BMW M3 and BMW M5 were erroneously omitted from the April 6, 2004 publication of preliminary theft data. The agency has corrected the final theft data to include the theft rate information for the Cadillac Limousine, BMW M3 and BMW M5 vehicles. As a result of this correction, the Cadillac Limousine is ranked No. 213 with a theft rate of 0.0000, the BMW M3 is ranked No. 23 with a theft rate of 4.8012 and the BMW M5 is ranked No. 62 with a theft rate of 2.7510.

VW also informed the agency that the production volume for the Audi TT/Quattro and the Bentley Arnage was listed incorrectly. As a result of VW's comments, the production volume for the Audi TT/Quattro and the Bentley Arnage have been corrected and the final theft list has been revised. The Audi TT/Quattro previously ranked No. 136 with a theft rate of 1.4268 is now ranked No. 148 with a theft rate of 1.2575. The Bentley Arnage previously ranked No. 220 with a theft rate of 0.0000 is now ranked No. 221 with the theft rate unchanged.

VW informed the agency that the S4/Quattro ranked at No. 2 was incorrectly listed as the ''24/Quattro.'' Because the S4 is a model within the A4 vehicle line, production and theft totals have been combined for the A4 vehicle line and the theft data has been revised accordingly. The Audi A4 is now ranked No. 110 with a theft rate of 1.8970. Additionally, because the S6 is a model within the A6 vehicle line, production and theft totals have been combined for the A6 vehicle line and the theft data has been revised accordingly. The Audi A6 vehicle line is now ranked No. 188 with a theft rate of 0.6303.

Further review of the final theft list revealed that the Acura Integra was erroneously listed. The Acura Integra was not produced in MY 2002. The correct name designation for the vehicle

previously ranked No. 87 (Integra) should be changed to the Acura RSX now ranked No. 88. The final theft list has been revised accordingly.

The following list represents NHTSA's final calculation of theft rates for all 2002 passenger motor vehicle lines. This list is intended to inform the public of calendar year 2002 motor vehicle thefts of model year 2002 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. chapter 331, Theft Prevention.

FINAL THEFT RATES OF MODEL YEAR 2002 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002

Number	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	CHRYSLER NEON [1]	1	24	41.6667
2	DAIMLERCHRYSLER	DODGE INTREPID	1,657	111,491	14.8622
3	DAIMLERCHRYSLER	DODGE STRATUS	1,254	106,771	11.7448
4	SUZUKI	ESTEEM	108	9,670	11.1686
5	DAIMLERCHRYSLER	CHRYSLER SEBRING	611	75,163	8.1290
6	DAIMLERCHRYSLER	DODGE NEON	959	119,253	8.0417
7	HONDA	ACURA NSX	2	254	7.8740
8	MITSUBISHI	MONTERO	206	27,266	7.5552
9	MITSUBISHI	GALANT	668	92,948	7.1868
10	MITSUBISHI	MIRAGE	60	9,240	6.4935
11	MITSUBISHI	MONTERO SPORT	350	57,457	6.0915
12	FORD MOTOR CO.	FORD F150 PICKUP	27	4,473	6.0362
13	AUDI	S8	2	340	5.8824
14	MITSUBISHI	ECLIPSE	239	41,334	5.7822
15	NISSAN	MAXIMA	490	86,036	5.6953
16	KIA MOTORS	OPTIMA	155	27,593	5.6174
17	FORD MOTOR CO.	FORD ESCORT	457	81,672	5.5956
18	GENERAL MOTORS	PONTIAC GRAND AM	838	154,306	5.4308
19	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE.	251	46,637	5.3820
20	MITSUBISHI	LANCER	397	73,991	5.3655
21	DAIMLERCHRYSLER	CHRYSLER CONCORDE	194	37,131	5.2247
22	MITSUBISHI	DIAMANTE	96	19,707	4.8714
23	BMW	M3	46	9,581	4.8012
24	DAIMLERCHRYSLER	CHRYSLER INTREPID	6	1,254	4.7847
25	TOYOTA	COROLLA	690	147,983	4.6627
26	DAIMLERCHRYSLER	CHRYSLER 300M	167	36,663	4.5550
27	GENERAL MOTORS	OLDSMOBILE ALERO	333	79,373	4.1954
28	KIA MOTORS	SPECTRA	298	71,837	4.1483
29	KIA MOTORS	RIO	227	57,292	3.9622
30	GENERAL MOTORS	CHEVROLET CAVALIER	1,017	262,251	3.8780
31	TOYOTA	LEXUS IS	93	24,079	3.8623
32	GENERAL MOTORS	CADILLAC SEVILLE	97	25,128	3.8602
33	SUZUKI	VITARA/GRAND	232	60,318	3.8463
34	NISSAN	SENTRA	434	113,962	3.8083
35	GENERAL MOTORS	PONTIAC SUNFIRE	286	76,445	3.7413
36	DAIMLERCHRYSLER	CHRYSLER PROWLER	5	1,348	3.7092
37	GENERAL MOTORS	CHEVROLET MONTE CARLO	252	68,570	3.6751
38	FORD MOTOR CO.	LINCOLN TOWN CAR	132	36,635	3.6031
39	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	369	103,341	3.5707
40	GENERAL MOTORS	CHEVROLET MALIBU	495	144,946	3.4151
41	GENERAL MOTORS	CHEVROLET PRIZM	96	28,197	3.4046
42	NISSAN	ALTIMA	651	192,701	3.3783
43	HYUNDAI	ACCENT	307	92,157	3.3313
44	JAGUAR	XK8	8	2,455	3.2587
45	MERCEDES-BENZ	129 (SL-CLASS)	9	2,776	3.2421
46	NISSAN	INFINITI Q45	26	8,065	3.2238
47	MAZDA	MILLENIA	67	20,800	3.2212
48	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	772	241,696	3.1941
49	ISUZU	TROOPER	40	12,638	3.1651
50	GENERAL MOTORS	OLDSMOBILE AURORA	34	10,861	3.1305
51	JAGUAR	S-TYPE	38	12,319	3.0847
52	TOYOTA	CELICA	79	25,683	3.0760
53	FORD MOTOR CO.	MERCURY SABLE	322	105,415	3.0546
54	GENERAL MOTORS	PONTIAC GRAND PRIX	434	144,654	3.0003
55	GENERAL MOTORS	CHEVROLET CAMARO	121	40,383	2.9963
56	FORD MOTOR CO.	FORD FOCUS	753	252,987	2.9764
57	FORD MOTOR CO.	LINCOLN LS	153	51,704	2.9592
58	GENERAL MOTORS	CHEVROLET CORVETTE	99	33,586	2.9477
59	DAEWOO	LANOS	19	6,452	2.9448
60	DAIMLERCHRYSLER	CHRYSLER VOYAGER	120	41,348	2.9022
61	HYUNDAI	SONATA	225	80,049	2.8108
62	BMW	M5	6	2,181	2.7510
63	BMW	7	50	18,222	2.7439

FINAL THEFT RATES OF MODEL YEAR 2002 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002—Continued

Number	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 theft rate (per 1,000 vehicles produced)
64	GENERAL MOTORS	PONTIAC FIREBIRD/FORMULA	81	29,687	2.7285
65	FORD MOTOR CO.	FORD TAURUS	842	321,556	2.6185
66	FORD MOTOR CO.	MERCURY MOUNTAINEER	196	77,787	2.5197
67	DAIMLERCHRYSLER	JEEP CHEROKEE/GRAND	533	211,786	2.5167
68	HYUNDAI	ELANTRA	299	118,962	2.5134
69	JAGUAR	XKR	4	1,595	2.5078
70	HONDA	PASSPORT	15	5,999	2.5004
71	TOYOTA	TUNDRA PICKUP	66	26,442	2.4960
72	GENERAL MOTORS	BUICK REGAL	95	39,124	2.4282
73	NISSAN	INFINITI G20	31	12,788	2.4241
74	TOYOTA	4RUNNER	205	85,126	2.4082
75	GENERAL MOTORS	OLDSMOBILE INTRIGUE	60	25,008	2.3992
76	TOYOTA	LEXUS SC	61	25,683	2.3751
77	GENERAL MOTORS	BUICK CENTURY	331	141,818	2.3340
78	FORD MOTOR CO.	MERCURY GRAND MARQUIS	146	62,648	2.3305
79	FORD MOTOR CO.	FORD EXPLORER	1,419	610,268	2.3252
80	NISSAN	XTERRA	231	99,887	2.3126
81	MAZDA	626	113	49,181	2.2976
82	GENERAL MOTORS	CADILLAC DEVILLE	209	91,057	2.2953
83	SUZUKI	AERIO	31	13,666	2.2684
84	HONDA	ACURA 3.2 CL	13	5,749	2.2613
85	GENERAL MOTORS	SATURN LS	191	84,966	2.2480
86	MAZDA	PROTÉGÉ	219	97,882	2.2374
87	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	377	169,559	2.2234
88	HONDA	ACURA RSX	95	42,809	2.2192
89	TOYOTA	RAV4	212	96,489	2.1971
90	ISUZU	AXIOM	40	18,280	2.1882
91	TOYOTA	CAMRY/SOLARA	1,027	472,030	2.1757
92	MERCEDES-BENZ	208 (CLK-CLASS)	43	20,199	2.1288
93	JAGUAR	XJ8	5	2,354	2.1240
94	FORD MOTOR CO.	FORD RANGER PICKUP	499	238,558	2.0917
95	KIA MOTORS	SPORTAGE	97	46,883	2.0690
96	DAIMLERCHRYSLER	JEEP LIBERTY	429	207,991	2.0626
97	DAEWOO	NUBIRA	11	5,351	2.0557
98	GENERAL MOTORS	PONTIAC BONNEVILLE	87	42,664	2.0392
99	VOLVO	C70	7	3,454	2.0266
100	HYUNDAI	XG	38	18,842	2.0168
101	TOYOTA	ECHO	65	32,495	2.0003
102	DAIMLERCHRYSLER	JEEP WRANGLER	133	66,565	1.9980
103	NISSAN	FRONTIER PICKUP	181	90,964	1.9898
104	GENERAL MOTORS	CADILLAC ELDORADO	14	7,047	1.9867
105	MERCEDES-BENZ	215 (CL-CLASS)	10	5,062	1.9755
106	MERCEDES-BENZ	220 (S-CLASS)	53	26,918	1.9689
107	DAEWOO	LEGANZA	11	5,593	1.9667
108	TOYOTA	TACOMA PICKUP	315	162,322	1.9406
109	GENERAL MOTORS	CHEVROLET TRACKER	88	45,793	1.9217
110	AUDI	A4/A4 QUATTRO/S4	73	38,482	1.8970
111	GENERAL MOTORS	CHEVROLET IMPALA	375	201,467	1.8613
112	TOYOTA	LEXUS LS	50	27,162	1.8408
113	FORD MOTOR CO.	FORD ESCAPE	291	159,322	1.8265
114	NISSAN	INFINITI QX4	29	15,943	1.8190
115	SUBARU	IMPREZA	108	59,391	1.8185
116	NISSAN	PATHFINDER	107	59,409	1.8011
117	GENERAL MOTORS	CHEVROLET S10/T10 PICKUP	251	139,521	1.7990
118	MAZDA	B-SERIES PICKUP	40	22,275	1.7957
119	VOLKSWAGEN	GOLF/GTI	55	31,640	1.7383
120	GENERAL MOTORS	CHEVROLET ASTRO VAN	67	38,963	1.7196
121	HONDA	S2000	17	10,049	1.6917
122	GENERAL MOTORS	GMC SONOMA PICKUP	66	39,292	1.6797
123	HONDA	ACCORD	702	419,398	1.6738
124	VOLVO	S40	23	13,980	1.6452
125	MAZDA	MX–5 MIATA	22	13,544	1.6243
126	VOLVO	S80	25	15,851	1.5772
127	HONDA	ACURA 3.2 TL	95	60,860	1.5610
128	ISUZU	RODEO	65	41,996	1.5478
129	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY MPV.	202	130,937	1.5427
130	HONDA	CIVIC	500	329,778	1.5162
131	JAGUAR	VANDEN PLAS/SUPER V8	3	1,981	1.5144

FINAL THEFT RATES OF MODEL YEAR 2002 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002—Continued

Number	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 theft rate (per 1,000 vehicles produced)
132	MERCEDES-BENZ	170 (SLK-CLASS)	12	7,954	1.5087
133	VOLKSWAGEN	JETTA	218	144,790	1.5056
134	GENERAL MOTORS	SATURN SL	221	148,514	1.4881
135	GENERAL MOTORS	CHEVROLET TRAILBLAZER	375	253,249	1.4808
136	FORD MOTOR CO.	MERCURY COUGAR	35	24,485	1.4294
137	BMW	3	146	102,574	1.4234
138	FORD MOTOR CO.	FORD CROWN VICTORIA	32	22,564	1.4182
139	PORSCHE	911	17	12,034	1.4127
140	TOYOTA	LEXUS GS	25	17,863	1.3995
141	FORD MOTOR CO.	FORD WINDSTAR VAN	204	146,274	1.3946
142	GENERAL MOTORS	BUICK PARK AVENUE	42	31,913	1.3161
143	NISSAN	INFINITI I35	40	30,604	1.3070
144	PORSCHE	BOXSTER	13	9,975	1.3033
145	BMW	5	45	39,445	1.2929
146	MERCEDES-BENZ	203 (C-CLASS)	91	70,688	1.2873
147	VOLKSWAGEN	EUROVAN/CAMPER	7	5,472	1.2792
148	AUDI	TT	14	11,133	1.2575
149	JAGUAR	X-TYPE	44	35,659	1.2339
150	HYUNDAI	SANTA FE	99	82,824	1.1953
151	VOLVO	S60	48	40,884	1.1741
152	JAGUAR	XJR	1	853	1.1723
153	TOYOTA	MR2 SPYDER	6	5,335	1.1246
154	VOLVO	V40	3	2,680	1.1194
155	GENERAL MOTORS	PONTIAC AZTEK	20	17,886	1.1182
156	GENERAL MOTORS	SATURN SC	48	43,213	1.1108
157	SAAB	38233	20	18,055	1.1077
158	VOLKSWAGEN	CABRIO	13	11,749	1.1065
159	GENERAL MOTORS	BUICK LESABRE	148	137,737	1.0745
160	KIA MOTORS	SEDONA VAN	53	49,731	1.0657
161	VOLKSWAGEN	PASSAT	99	93,812	1.0553
162	GENERAL MOTORS	GMC ENVOY	112	108,650	1.0308
163	MERCEDES-BENZ	210 (E-CLASS)	31	30,368	1.0208
164	TOYOTA	AVALON	69	67,772	1.0181
165	TOYOTA	PRIUS	23	22,737	1.0116
166	FORD MOTOR CO.	LINCOLN CONTINENTAL	19	18,804	1.0104
167	VOLKSWAGEN	NEW BEETLE	56	56,045	0.9992
168	TOYOTA	SIENNA VAN	82	85,417	0.9600
169	NISSAN	QUEST VAN	20	21,099	0.9479
170	TOYOTA	LEXUS RX	69	73,049	0.9446
171	LAND ROVER	FREELANDER	15	16,268	0.9221
172	GENERAL MOTORS	GMC SAFARI VAN	9	9,887	0.9103
173	FORD MOTOR CO.	FORD MUSTANG	705	775,153	0.9095
174	MAZDA	TRIBUTE	45	49,561	0.9080
175	GENERAL MOTORS	OLDSMOBILE BRAVADA	25	28,658	0.8724
176	HONDA	ACURA 3.5 RL	14	16,449	0.8511
177	GENERAL MOTORS	BUICK RENDEZVOUS	66	77,573	0.8508
178	GENERAL MOTORS	CHEVROLET VENTURE VAN	71	84,116	0.8441
179	TOYOTA	HIGHLANDER	90	110,530	0.8143
180	TOYOTA	LEXUS ES	57	70,517	0.8083
181	GENERAL MOTORS	PONTIAC MONTANA VAN	35	45,558	0.7683
182	VOLVO	V70	9	12,144	0.7411
183	HONDA	ACURA MDX	36	48,998	0.7347
184	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP	106	145,238	0.7298
185	SUBARU	FORESTER	39	55,114	0.7076
186	QUANTUM TECH.	CHEVROLET CAVALIER	1	1,483	0.6743
187	FORD MOTOR CO.	MERCURY VILLAGER VAN	12	18,364	0.6535
188	AUDI	A6/A6 QUATTRO/S6/AVANT	14	22,212	0.6303
189	GENERAL MOTORS	SATURN VUE	21	35,178	0.5970
190	SUBARU	LEGACY/OUTBACK	47	88,790	0.5293
191	MAZDA	MPV VAN	13	25,122	0.5175
192	HONDA	INSIGHT	1	2,006	0.4985
193	FORD MOTOR CO.	FORD THUNDERBIRD	14	28,639	0.4888
194	BMW	MINI COOPER	8	17,033	0.4697
195	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	11	23,863	0.4610
196	HONDA	CR-V	62	138,061	0.4491
197	BMW	M/Z3	8	18,768	0.4263
198	SAAB	38235	6	15,339	0.3912
199	HONDA	ODYSSEY VAN	58	148,857	0.3896
200	VOLVO	XC	8	20,725	0.3860

FINAL THEFT RATES OF MODEL YEAR 2002 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2002—Continued

Number	Manufacturer	Make/model (line)	Thefts 2002	Production (Mfr's) 2002	2002 theft rate (per 1,000 vehicles produced)
201	GENERAL MOTORS	SATURN LW	4	11,273	0.3548
202	FORD MOTOR CO.	FORD TH!NK NEIGHBOR	2	6,613	0.3024
203	ASTON MARTIN	VANQUISH	0	127	0.0000
204	ASTON MARTIN	VANTAGE	0	265	0.0000
205	AUDI	A8	0	672	0.0000
206	AUDI	ALLROAD QUATTRO	0	5,085	0.0000
207	BMW	Z8	0	687	0.0000
208	DAIMLERCHRYSLER	DODGE VIPER	0	1,355	0.0000
209	FERRARI	360	0	684	0.0000
210	FERRARI	456	0	20	0.0000
211	FERRARI	575M	0	208	0.0000
212	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE.	0	1,032	0.0000
213	GENERAL MOTORS	CADILLAC LIMOUSINE	0	875	0.0000
214	JAGUAR	XJS	0	1,000	0.0000
215	LAMBORGHINI	MURCIELAGO	0	98	0.0000
216	LOTUS	ESPRIT	0	100	0.0000
217	MASERATI	COUPE/SPIDER	0	492	0.0000
218	MITSUBISHI	NATIVA [2]	0	1,513	0.0000
219	ROLLS-ROYCE	PARK WARD	0	12	0.0000
220	ROLLS-ROYCE	SILVER SERAPH	0	63	0.0000
221	ROLLS-ROYCE	BENTLEY ARNAGE	0	256	0.0000
222	ROLLS-ROYCE	BENTLEY AZURE	0	101	0.0000
223	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	31	0.0000
224	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	2	0.0000
225	ROLLS-ROYCE	BENTLEY CORNICHE	0	37	0.0000

[1] This vehicle was manufactured under the Chrysler nameplate for sale in a U.S. Territory and only (Guam, American Samoa, Puerto Rico) and the Virgin Islands (St. Thomas and St. Croix).
[2] This vehicle was manufactured for sale only in Puerto Rico and represents the U.S. version of the Montero Sport line.

Issued on: August 25, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–19962 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 635, 648, 660, and 679

[Docket No. 040824244–4244–01; I.D. 052804A]

RIN 0648–AS44

Fishing Capacity Reduction; Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs; Implementation of the Shark Finning Prohibition Act; Atlantic Highly Migratory Species; Fisheries of the Northeastern United States; Fisheries Off West Coast States and in the Western Pacific; Fisheries of the Exclusive Economic Zone Off Alaska

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to reorganize, by redesignation, its fishing capacity reduction program (FCRP) regulations and FCRP fee system regulations. To accomplish this, it is also necessary to redesignate regulatory provisions implementing the Shark Finning Prohibition Act (Act). The redesignation involves changing subparts, renumbering regulatory provisions, and revising regulatory references. The substantive provisions are not changed in any way; only the old Code of Federal Regulations (CFR) unit numbers are redesignated with new CFR unit numbers. Also, one subpart title and one section title are modified. Several sections are reserved to ensure a logical organization. The intent of this rule is to improve understanding and ease of use of FCRP regulations, and to make additional sequential section numbers available for future FCRP regulations.

DATES: Effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Gorrell, Office of Sustainable Fisheries, NMFS headquarters, at 301–713–2341.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

Background

FCRP Framework Regulations

NMFS published its framework regulations for fishing capacity reduction programs on May 18, 2000 (65 FR 31443) as a new Subpart L—Fishing Capacity Reduction under Part 600—Magnuson-Stevens Act Provisions. These regulations serve as a framework that may be used in developing future FCRPs for specific fisheries and include provisions for fee payment and collection in repaying reduction loans. The section numbering of these framework regulations begins with § 600.1000 and ends with § 600.1017. The subpart title ''Subpart L—Fishing Capacity Reduction'' is being renamed ''Subpart L—Fishing Capacity Reduction Framework.'' Also, ''§ 600.1018'' is being redesignated as ''§ 600.1103'' in a new subpart M containing specific fishery program regulations.

In summary, the new subpart L of part 600 would be organized as follows:

Subpart L—Fishing Capacity Reduction Framework

§§ 600.1000–600.1017 Unchanged from current provisions.

Specific Fishery Program Regulations

The current ''Subpart M—Shark Finning'' will be redesignated as ''Subpart N—Shark Finning'' to make room for a new ''Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations.'' This new subpart will contain all FCRP codified regulations specific to a fishery or related fisheries, including any FCRP fee system regulations for which FCRP regulations were not codified for that fishery (*e.g.*, the Pacific groundfish fishing capacity reduction program was published as a notice (68 FR 42613, July 18, 2003) and not codified, while its fee collection system will be codified under subpart M at § 600.1102). The FCRP regulations in the new subpart M will be ordered chronologically by section number. The first section (§ 600.1100) will be reserved for purpose and scope, and general information.

The Alaska inshore pollock fee collection regulations currently constituting subpart G to Part 679—Fisheries of the Exclusive Economic Zone off Alaska of title 50 will be moved to § 600.1101 of the new subpart M. This was the first fishery-specific FCRP with codified regulations (65 FR 5281, Feb. 3, 2000; 65 FR 6921, Feb. 11, 2000).

The Pacific groundfish fee collection regulations (soon to be proposed in the **Federal Register**) will be codified under subpart M at § 600.1102. This would establish a fee collection system for a voluntary fishing capacity reduction program implemented in 2003 for the Pacific Coast groundfish trawl fishery (except whiting catcher processors)(68 FR 42613, July 18, 2003).

The Bering Sea and Aleutian Islands King and Tanner Crab fishing capacity reduction program regulations (68 FR 69331, December 12, 2003) will be moved to § 600.1103 of the new subpart M. This was the second fishery-specific FCRP with codified regulations, but will potentially be the third fishery to have a codified fee collection system. The readministered first referendum was unsuccessful. Consequently, NMFS sent a second invitation to bid and a second bidding form/reduction contract to 281 qualified bidders. Once the second round of bidding closes on September 24, 2004, NMFS will then hold a second referendum on the results of the second round of bidding. Assuming the second referendum passes, a proposed fee collection system could be published in the **Federal Register** later this year. The crab fee collection system would be codified under subpart M at § 600.1104.

In summary, the new subpart M of part 600 would be organized as follows:

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

§ 600.1100 General. [Reserved]

§ 600.1101 Inshore Fee System for Repayment of the Loan to Harvesters of Pollock from the Directed Fishing Allowance Allocated to the Inshore Component Under Section 206(b)(1) of the AFA. (**Note:** §§ 600.1101(a)–(g) were moved from subpart G of part 679)

§ 600.1102 Pacific Groundfish fishing capacity reduction fee collection system. [Reserved]

§ 600.1103 Bering Sea and Aleutian Islands (BSAI) Crab species program. (**Note:** § 600.1108 was moved from subpart L of part 600)

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) Crab fee collection system. [Reserved]

Shark Finning Regulations

The regulatory provisions governing shark finning that are being redesignated were published as a final rule on February 11, 2002 (67 FR 6200). Those regulations established a new Subpart M-Shark Finning in 50 CFR part 600 containing §§ 600.1019 through 600.1023. By beginning the section numbering sequence with § 600.1019, subpart M left insufficient room for Subpart L—Fishing Capacity Reduction to expand (subpart L ended with § 600.1018). That rule prohibits persons under U.S. jurisdiction from engaging in shark finning, possessing shark fins harvested on board a U.S. fishing vessel without corresponding shark carcasses, or landing shark fins harvested without corresponding carcasses. That shark finning rule also modified regulations pertaining to shark conservation and management for certain shark fisheries set forth in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of title 50 governing those fisheries. Because references to shark finning prohibitions in parts 635, 648, and 660 refer to subpart M of part 600, changes to parts 635, 648, and/or 660 are necessary as a result of redesignating this old subpart M as a new subpart N beginning with § 600.1200.

In summary, the new subpart N of part 600 would be organized as follows:

Subpart N—Shark Finning

§§ 600.1200–600.1204 Unchanged from current provisions.

Conforming changes will be made by the Office of the Federal Register to the Table of Contents for Part 600—Magnuson-Stevens Act Provisions and Part 679–Fisheries of the Exclusive Economic Zone off Alaska.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. The AA finds that prior notice and comment are unnecessary as this rule has a non-substantive effect on the public. It reorganizes, by redesignation, FCRP regulations, FCRP fee system regulations, and shark finning regulations. That redesignation involves changing subparts, renumbering regulatory provisions, revising regulatory references, and reserving sections. The rule is designed to improve understanding and ease of use of FCRP regulations, and to make additional sequential section numbers available for future FCRP regulations. No particular public interest exists in this final rule for which there is the need for prior notice and comment.

Because this final rule does not institute any substantive obligations for the public, the requirement for a 30-day delay in the effective date of this action pursuant to 5 U.S.C. 553(d) does not apply.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C., or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 25, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600, 635, 648, 660 and 679 are amended as follows:

■ 1. The authority citation for parts 600, 635, 648, 660, and 679 continues to read as follows:

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

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart L—Fishing Capacity Reduction Framework

■ 2. The title of subpart L of part 600 is revised to read as set forth above.

§§ 600.1019–600.1023 [Redesignated as §§ 600.1200–600.1204]

■ 3. Subpart M (§§ 600.1019–600.1023) of part 600 is redesignated as subpart N (§§ 600.1200–600.1204), as follows:

Part 600, subpart M, old section	Part 600, subpart N, new section
§ 600.1019	§ 600.1200.
§ 600.1020	§ 600.1201.
§ 600.1020(a)	§ 600.1201(a).
§ 600.1020(b)	§ 600.1201(b).
§ 600.1020(c)	§ 600.1201(c).
§ 600.1020(d)	§ 600.1201(d).
§ 600.1021	§ 600.1202.
§ 600.1021(a)	§ 600.1202(a).
§ 600.1021(b)	§ 600.1202(b).
§ 600.1022	§ 600.1203.
§ 600.1022(a)	§ 600.1203(a).
§ 600.1022(b)(1)	§ 600.1203(b)(1).
§ 600.1022(b)(2)	§ 600.1203(b)(2).
§ 600.1023	§ 600.1204.
§ 600.1023(a)(1)	§ 600.1204(a)(1).
§ 600.1023(a)(2)	§ 600.1204(a)(2).
§ 600.1023(b)	§ 600.1204(b).
§ 600.1023(c)	§ 600.1204(c).
§ 600.1023(d)	§ 600.1204(d).
§ 600.1023(e)	§ 600.1204(e).
§ 600.1023(f)	§ 600.1204(f).
§ 600.1023(g)	§ 600.1204(g).
§ 600.1023(h)	§ 600.1204(h).
§ 600.1023(i)	§ 600.1204(i).
§ 600.1023(j)	§ 600.1204(j).
§ 600.1023(k)	§ 600.1204(k).
§ 600.1023(l)	§ 600.1204(l).

CHAPTER VI—[AMENDED]

■ 4. In 50 CFR Chapter VI, all references to ''§ 600.1022'' are revised to read ''§ 600.1203.''

■ 5. In 50 CFR Chapter VI, all references to ''§ 600.1023'' are revised to read ''§ 600.1204.''

■ 6. A new subpart M for part 600 is added to read as follows:

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

§ 600.1100 General [Reserved]

■ 7. Section 600.1100 General of part 600, subpart M, is added and reserved.

PART 679—[AMENDED]

Subpart G of Part 679, §§ 679.70–679.76—[Redesignated as § 600.1101]

■ 8. The heading of Subpart G is redesignated as the heading of § 600.1101.

■ 9. Sections 679.70 through 679.76 of subpart G are redesignated as follows:

Part 679, subpart G, old section	Part 600, subpart M, new section
§ 679.70 section heading and text	§ 600.1101(a) paragraph heading and text.
§ 679.71 section heading	§ 600.1101(b) paragraph heading.
§ 679.71(a)	§ 600.1101(b)(1).
§ 679.71(b)	§ 600.1101(b)(2).
§ 679.71(c)	§ 600.1101(b)(3).
§ 679.71(d)	§ 600.1101(b)(4).
§ 679.71(e)	§ 600.1101(b)(5).
§ 679.72 section heading	§ 600.1101(c) paragraph heading.
§ 679.72(a)	§ 600.1101(c)(1).
§ 679.72(a)(1)	§ 600.1101(c)(1)(i).
§ 679.72(a)(2)	§ 600.1101(c)(1)(ii).
§ 679.72(a)(2)(i)	§ 600.1101(c)(1)(ii)(A).
§ 679.72(a)(2)(i)(A)	§ 600.1101(c)(1)(ii)(A)(1).
§ 679.72(a)(2)(i)(B)	§ 600.1101(c)(1)(ii)(A)(2).
§ 679.72(a)(2)(i)(C)	§ 600.1101(c)(1)(ii)(A)(3).
§ 679.72(a)(2)(ii)	§ 600.1101(c)(1)(ii)(B).
§ 679.72(b)	§ 600.1101(c)(2).
§ 679.72(b)(1)	§ 600.1101(c)(2)(i).
§ 679.72(b)(2)	§ 600.1101(c)(2)(ii).
§ 679.72(c)	§ 600.1101(c)(3).
§ 679.72(c)(1)	§ 600.1101(c)(3)(i).
§ 679.72(c)(1)(i)	§ 600.1101(c)(3)(i)(A).
§ 679.72(c)(1)(ii)	§ 600.1101(c)(3)(i)(B).
§ 679.72(c)(1)(iii)	§ 600.1101(c)(3)(i)(C).
§ 679.72(c)(1)(iv)	§ 600.1101(c)(3)(i)(D).
§ 679.72(c)(2)	§ 600.1101(c)(3)(ii).
§ 679.72(c)(2)(i)	§ 600.1101(c)(3)(ii)(A).
§ 679.72(c)(2)(ii)	§ 600.1101(c)(3)(ii)(B).
§ 679.72(c)(2)(iii)	§ 600.1101(c)(3)(ii)(C).
§ 679.72(c)(2)(iv)	§ 600.1101(c)(3)(ii)(D).
§ 679.72(c)(2)(v)	§ 600.1101(c)(3)(ii)(E).
§ 679.73 section heading	§ 600.1101(d) paragraph heading.
§ 679.73(a)	§ 600.1101(d)(1).
§ 679.73(b)	§ 600.1101(d)(2).
§ 679.73(c)	§ 600.1101(d)(3).
§ 679.73(d)	§ 600.1101(d)(4).

Part 679, subpart G, old section	Part 600, subpart M, new section
§ 679.73(d)(1)	§ 600.1101(d)(4)(i).
§ 679.73(d)(1)(i)	§ 600.1101(d)(4)(i)(A).
§ 679.73(d)(1)(ii)	§ 600.1101(d)(4)(i)(B).
§ 679.73(d)(1)(iii)	§ 600.1101(d)(4)(i)(C).
§ 679.73(d)(1)(iv)	§ 600.1101(d)(4)(i)(D).
§ 679.73(d)(1)(v)	§ 600.1101(d)(4)(i)(E).
§ 679.73(d)(1)(vi)	§ 600.1101(d)(4)(i)(F).
§ 679.73(d)(1)(vii)	§ 600.1101(d)(4)(i)(G).
§ 679.73(d)(1)(viii)	§ 600.1101(d)(4)(i)(H).
§ 679.73(d)(1)(ix)	§ 600.1101(d)(4)(i)(I).
§ 679.73(d)(2)	§ 600.1101(d)(4)(ii).
§ 679.73(d)(2)(i)	§ 600.1101(d)(4)(ii)(A).
§ 679.73(d)(2)(ii)	§ 600.1101(d)(4)(ii)(B).
§ 679.73(d)(2)(iii)	§ 600.1101(d)(4)(ii)(C).
§ 679.73(e)	§ 600.1101(d)(5).
§ 679.73(e)(1)	§ 600.1101(d)(5)(i).
§ 679.73(e)(2)	§ 600.1101(d)(5)(ii).
§ 679.73(e)(3)	§ 600.1101(d)(5)(iii).
§ 679.73(e)(4)	§ 600.1101(d)(5)(iv).
§ 679.73(e)(5)	§ 600.1101(d)(5)(v).
§ 679.73(e)(6)	§ 600.1101(d)(5)(vi).
§ 679.73(e)(7)	§ 600.1101(d)(5)(vii).
§ 679.73(f)	§ 600.1101(d)(6).
§ 679.73(g)	§ 600.1101(d)(7).
§ 679.73(h)	§ 600.1101(d)(8).
§ 679.73(i)	§ 600.1101(d)(9).
§ 679.74 section heading and text	§ 600.1101(e) paragraph heading and text.
§ 679.75 section heading and text	§ 600.1101(f) paragraph heading and text.
§ 679.76 section heading	§ 600.1101(g) paragraph heading.
§ 679.76(a)	§ 600.1101(g)(1).
§ 679.76(a)(1)	§ 600.1101(g)(1)(i).
§ 679.76(a)(2)	§ 600.1101(g)(1)(ii).
§ 679.76(a)(3)	§ 600.1101(g)(1)(iii).
§ 679.76(a)(4)	§ 600.1101(g)(1)(iv).
§ 679.76(a)(5)	§ 600.1101(g)(1)(v).
§ 679.76(a)(6)	§ 600.1101(g)(1)(vi).
§ 679.76(a)(7)	§ 600.1101(g)(1)(vii).
§ 679.76(a)(8)	§ 600.1101(g)(1)(viii).
§ 679.76(b)	§ 600.1101(g)(2).

CHAPTER VI—[AMENDED]

■ 10. In Chapter VI, all references to ''§ 679.72'' are revised to read ''§ 600.1101(c).''

PART 600—[AMENDED]

§ 600.1102 Pacific groundfish fee collection system [Reserved]

■ 11. Section 600.1102, Pacific groundfish fee collection system, of part 600, subpart M, is added and reserved.

§ 600.1018 [Redesignated as § 600.1103]

■ 12. Section 600.1018 is redesignated as § 600.1103.

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) Crab fee collection system [Reserved]

■ 13. Section 600.1104 Bering Sea and Aleutian Islands (BSAI) Crab fee collection system of part 600, subpart M, is added and reserved.

PART 635—[AMENDED]

§§ 635.30 and 635.31 [Amended]

■ 14. In §§ 635.30(c)(1) through (3) and 635.31(c)(3) and 635.31(c)(5), all references to ''part 600, subpart M,'' or to ''part 600 (subpart M),'' are revised to read ''part 600, subpart N.''

§ 635.71 [Amended]

■ 15. In § 635.71(d)(7), references to ''§ 600.1023'' are revised to read ''§ 600.1204.''

PART 648—[AMENDED]

§ 648.14 [Amended]

■ 16. In § 648.14(aa)(4) the reference to ''§ § 600.1022 and 600.1023'' is revised to read ''§ § 600.1203 and 600.1204, part 600, subpart N.''

§ 648.235 [Amended]

■ 17. In § 648.235(c) the reference to ''part 600, subpart M,'' is revised to read ''part 600, subpart N.''

PART 660—[AMENDED]

§ 660.1 [Amended]

■ 18. In § 660.1(c) the reference to ''part 600, subpart M,'' is revised to read ''part 600, subpart N.''

[FR Doc. 04–19866 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 082604A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #9 - Adjustment of the Commercial Salmon Fishery from Humbug Mountain, Oregon to the Oregon-California Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the Humbug Mountain, OR to the Oregon-California Border was modified to close at midnight on Wednesday, August 4, 2004. This action was necessary to conform to the 2004 management goals. The intended effect of this action is to allow the fishery to operate within the seasons and quotas as specified in the 2004 annual management measures.

DATES: Closure in the area from the Humbug Mountain, OR to the Oregon-California Border effective 2359 hours local time (l.t.), August 4, 2004, after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through September 16, 2004.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA9.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments and include the docket number in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial salmon fishery in the area from the Humbug Mountain, OR to the Oregon-California Border to close at midnight on Wednesday, August 4, 2004. On August 3, 2004, the Regional Administrator determined that available catch and effort data indicated that the quota of 2,500 chinook salmon would be reached by midnight on Wednesday, August 4, 2004. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR to the Oregon-California Border would open March 15 through May 31; June 1 through the earlier of June 30 or a 2,600–chinook quota; July 1 through the earlier of July 31 or a 1,600–chinook quota; August 1 through the earlier of August 29 or a 2,500–chinook quota; and September 1 through the earlier of September 30 or a 3,000–chinook quota.

The fishery in the area from Humbug Mountain, OR to the Oregon-California Border was modified by Inseason Action 14 to close at midnight on Saturday, June 19, 2004 (69 FR 40817, July 7, 2004) because the available catch and effort data indicated that the quota of 2,600 chinook salmon had been achieved.

The fishery in the area from Humbug Mountain, OR to the Oregon-California Border was also modified by Inseason Action 18 to close at midnight on Monday, July 19, 2004 (69 FR 52449, August 26, 2004), because the available catch and effort data indicated that the quota of 1,600 chinook salmon had been achieved.

On August 3, 2004, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached by Wednesday, August 4, 20004. As a result, the State of Oregon recommended, and the Regional Administrator concurred, that the area from Humbug Mountain, OR to the Oregon-California Border close effective at midnight on Wednesday, August 4, 2004. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the state. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the date this action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agency have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–19970 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 082704B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 29, 2004, 2004, through 1200 hrs, A.l.t., October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 630 of the GOA is 4,768 metric tons (mt) as established by the final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the C season allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,718 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the C season pollock TAC in Statistical Area 630.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2004.

John H. Dunnigan,

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

[FR Doc. 04–19950 Filed 8–27–04; 3:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 082704A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 29, 2004, through 1200 hrs, A.l.t., October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 620 of the GOA is 3,380 metric tons (mt) as established by the final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the revised C season allowance of the pollock TAC in Statistical Area 620 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,330 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the C season pollock TAC in Statistical Area 620.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon

the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2004.

John H. Dunnigan,

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

[FR Doc. 04–19951 Filed 8–27–04; 3:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 69, No. 169

Wednesday, September 1, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes; and Model MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models. That action would have superseded an existing AD to require that the repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions, if necessary; be performed at reduced intervals. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has determined that the proposed inspection requirements are identical to the inspection requirements of another existing AD. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes, was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 22, 2004 (69 FR 3036). The proposed rule would have superseded AD 2001–14–08, amendment 39–12319 (66 FR 36441, July 12, 2001), to require that the repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions, if necessary; be performed at reduced intervals (*i.e.*, from 6,000 flight hours to 2,500 flight hours). That action was prompted by a report from Boeing that the original compliance time was not adequate, because another incident of failure of an electric motor of the auxiliary hydraulic pump had occurred during the interval between repetitive inspections. The proposed actions were intended to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, we issued AD 2004–05–20, amendment 39–13515 (69 FR 11504, March 11, 2004), applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; and Model MD–11 and MD–11F airplanes. That AD requires modification of the installation wiring for the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear, and repetitive inspections (at intervals not to exceed 2,500 flight hours) of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. That action was prompted by several reports of failure of the auxiliary hydraulic pump systems. The requirements of that AD are intended to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

The repetitive inspections required by AD 2004–05–20 are identical to those proposed in the NPRM. Accomplishment of the modification and repetitive inspections requirements of AD 2004–05–20 adequately addresses the identified unsafe condition.

FAA's Conclusions

Upon further consideration, we have determined that the proposed inspection requirements of the NPRM are identical to the inspection requirements of AD 2004–05–20. Accordingly, the NPRM is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Other Relevant Rulemaking

For the reasons discussed previously, we are also planning on rescinding AD 2001–14–08 in a separate rulemaking action.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2003–NM–119–AD, published in the **Federal Register** on January 22, 2004 (69 FR 3036), is withdrawn.

Issued in Renton, Washington, on August 20, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–19925 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37 and 38

RIN 3038–AC14

Application Procedures for Registration as a Derivatives Transaction Execution Facility or Designation as a Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to revise the application and review procedures for registration as a Derivatives Transaction Execution Facility (DTEF) or designation as a Contract Market (DCM). Specifically, the Commission is proposing to eliminate the presumption of automatic fast-track review of applications and replace it with the presumption that all applications will be reviewed pursuant to the statutory 180-day timeframe and procedures specified in Section 6(a) of the Commodity Exchange Act (CEA or Act). In lieu of the automatic fast-track review (under which applicants were deemed to be registered as DTEFs 30 days, or designated as DCMs 60 days, after receipt of an application), the Commission is proposing to permit applicants to request expedited review and to be registered as a DTEF or designated as a DCM by the Commission not later than 90 days after the date of receipt of the application. The Commission is also proposing, among other things, to more completely identify application content requirements; to provide that review under the expedited review procedures may be terminated if it appears that the application is materially incomplete, raises novel or complex issues that require additional time for review, or has undergone substantive amendment or supplementation during the review period; to reorganize the paragraphs being revised; and to eliminate duplication. The Commission is proposing these amendments based upon its experience in processing applications and in light of administrative practices that have been implemented since the rules were first adopted.

DATES: Comments must be received by October 1, 2004.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to (202) 418–5521, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Application Procedures.'' Comments may also be submitted to the Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, (telephone (202) 418–5492, e-mail *dandresen@cftc.gov*), Division of Market Oversight, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. This document is also available at *http://www.regulations.gov*.

SUPPLEMENTARY INFORMATION: The Commission adopted the application procedures specified in Commission Regulations 37.5 [1] and 38.3 [2] for boards of trade applying to be registered as DTEFs or designated as DCMs in 2001 when it first implemented the Commodity Futures Modernization Act of 2000 (CFMA).[3] These procedures presume that an application will be submitted and reviewed pursuant to a fast-track procedure under which a board of trade is deemed to be designated as a DCM 60 days after submitting its application,[4] or registered as a DTEF 30 days after submitting its application,[5] unless notified otherwise during the respective review period. These fast-track review periods are substantially shorter than the 180-day review period specified in Section 6(a) of the Act for reviewing DCM and DTEF applications.[6] The rules provide procedures for terminating the fast-track review, including termination by the Commission if it appears that the application's form or substance fails to meet the requirements of the Commission's regulations.[7]

Among other things, the application procedures also generally identify information required to be included in applications for registration as a DTEF [8] or designation as a DCM,[9] require that the applicant support requests for confidential treatment of information included in the application with reasonable justification,[10] and identify where additional guidance for applicants can be found.[11] The rules also provide procedures for the withdrawal of an application for registration or vacation of registration as a DTEF [12] and for the withdrawal of an application for designation or vacation of designation as a DCM,[13] and specify the extent of the delegation of authority from the Commission to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, with respect to the termination of expedited review procedures.[14]

The Commission is proposing to modify the application procedures in a number of respects. With respect to the timeliness of the review of applications generally, it is proposing to establish the presumption that all applications are submitted for review under the 180-day timeframe specified in Section 6(a) of the Act.[15] An expedited 90-day review could be requested by the applicant, in which case the Commission would register the applicant as a DTEF or designate the applicant as a DCM during or by the end of the 90-day period unless the Commission terminated the expedited review for certain specifically identified reasons. In comparison to the current rules, the Commission is proposing to lengthen the expedited review periods for DCM applications by 30 days and for DTEF applications by 60 days. The Commission believes, based upon its extensive experience in processing DCM applications and in light of certain administrative practices that have developed since these rules were first adopted, that these potentially longer review periods are necessary to ensure a comprehensive review of applications and to meet other public policy objectives.

Specifically, the Commission has reviewed seven DCM applications under the fast-track review procedures and none of these reviews has been completed within the current fast-track 60-day review period. The applications

[1] 17 CFR 37.5.

[2] 17 CFR 38.3.

[3] *See* 66 FR 42256 (August 10, 2001). The CFMA, Appendix E of Pub. L. 106–554, 114 Stat. 2763, substantially revised the Commodity Exchange Act (Act or CEA), 7 U.S.C. § 1 *et. seq.*

[4] 17 CFR 38.3(a)(1).

[5] 17 CFR 37.5(b).

[6] *See* 7 U.S.C. 8(a).

[7] 17 CFR 37.5(d), 38.3(c).

[8] 17 CFR 37.5(b)(1)(iii).

[9] 17 CFR 38.3(a)(1)(iii).

[10] 17 CFR 37.5(b)(1)(v); 38.3(a)(1)(v).

[11] 17 CFR 37.5(c); 38.3(b).

[12] 17 CFR 37.5(e).

[13] 17 CFR 38.3(d).

[14] 17 CFR 37.5(f); 38.3(e).

[15] Under the current rules, DCM and DTEF applications are routinely reviewed under the fast-track procedures unless the applicant instructs the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act. *See* 17 CFR 37.5(b)(1)(vi); 38.3(a)(1)(vi).

themselves are large and often contain a number of regulatory and operational outsourcing agreements, as well as the technical documents describing electronic order matching systems.[16] The applications frequently need to be substantially amended or supplemented in various ways and unfailingly generate a series of questions by Commission staff responsible for reviewing the applications. In addition, a new Commission policy to promote transparency in Commission operations, implemented in August of 2003, provides for the posting of all such applications on the Commission's Web site for a period of at least 15 days for public review and comment.[17] This has also lengthened the review process. The proposed 90-day review period should provide the Commission with sufficient time to review these substantial applications and to respond to any public comments. The Commission notes that the proposed 90-day review period, while longer than the current fast-track review periods, would continue to be substantially shorter than the 180-day review period established under the Act.[18]

The Commission also is proposing to modify its internal processing procedures under which an applicant would be registered as a DTEF or designated as a DCM. Under the proposal, an applicant would no longer be deemed to be registered or designated based upon the passage of time (30 days for DTEFs, 60 days for DCMs). If the applicant requested expedited review, the Commission would take affirmative action to register or designate the applicant as a DTEF or DCM, respectively, subject to conditions if appropriate, not later than 90 days after receipt of the application, unless the Commission terminated the expedited review. Thus, registration as a DTEF or designation as a DCM would involve affirmative action by the Commission, which would normally be in the form of issuance of a Commission order. It should be noted that it would be possible, under the proposed procedures, for applicants who submit applications that are complete and not amended or supplemented during the review period to be registered as a DTEF or designated as a DCM in less than 90 days.

With respect to the termination of expedited review, the rules provide that fast-track review may be terminated because the application's form or substance fails to meet the requirements of part 37 or 38, as appropriate, or upon written instruction of the applicant during the review period. Based upon its experience in reviewing applications submitted to date and in light of its new practice of posting all such applications on the Commission's Web site for public review and comment, the Commission is proposing to clarify and expand the rationale for terminating expedited review. In addition to the reasons for termination cited above, the Commission is proposing that the expedited review period be terminated if the application is materially incomplete or, as more fully described below, undergoes major amendment or supplementation. The Commission is also proposing to provide for termination of expedited review if an application raises novel or complex issues that require additional time for review. This proposal is responsive to the substantial public interest that the Commission has witnessed to date with respect to DCM applications.

The Commission is further proposing to delete the provision of the rules that would require the Commission, upon terminating fast-track review, to commence a proceeding to deny a DCM or DTEF application upon the request of the applicant. This procedure has proved to be unnecessary to date, and an analogous procedure is available under the statutory review procedure.[19] Finally, the Commission is proposing to amend the expedited review procedures to expressly provide that expedited review would be terminated if an applicant so requests in writing. The Commission stresses that if expedited review were terminated for any of the reasons cited above, the application would continue to be reviewed pursuant to the 180-day statutory procedure.

In order to further enhance the application process, the Commission is proposing to more completely identify and expand the information required to be provided by an applicant under both the statutory 180-day and the expedited 90-day review procedures. The proposal clarifies that the rules required to be included in all applications are those rules as defined in Commission Regulation 40.1 and more clearly identifies the documents required to be provided pertaining to the applicant's legal status and governance structure. The Commission anticipates that such documents would include copies of corporate charters, limited liability corporation or partnership agreements, and the like.[20]

The proposal would make it clear that all applicants would be required to submit for review an executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant that enable the applicant to comply with a requirement for trading or registration criterion (DTEFs) or a designation criterion or core principle (DCMs) and that final, signed copies of such documents would be required to be submitted prior to registration or designation. The initial application would be required to include something more than a letter of intent or draft contract or agreement, such as a final contract or agreement signed by at least one of the parties. While the Commission is cognizant that applicants generally prefer to defer the finalization of contracts in order to defer associated costs until registration or designation, it must balance that preference against the assurance that a contract or agreement will actually be executed prior to registration or designation.

With respect to the additional information that would be required to be submitted as part of the application,[21] the proposal requires that applicants submit a ''regulatory chart'' that describes the manner in which the items included in the application enable the applicant to comply with each requirement for trading and registration criterion (DTEFs) or with each designation criterion and core principle (DCMs). The proposal would also require that the applicant identify any item included in the application that raises novel issues and explain how that item satisfies the requirements for trading or the registration criteria (DTEFs) or the designation criteria or the core principles (DCMs). In addition, the proposal would require that the applicant submit a copy of any manual or other document describing the

[16] In this regard, the initial application of one DCM applicant included over 1300 pages of supporting documents and thereafter the applicant submitted hundreds of additional pages before designation.

[17] The Commission has recently proposed revisions to Commission Regulation 40.8 to specify which portions of an application for registration as a DTEF or designation as a DCM will be made public. *See* 69 FR 44981 (July 28, 2004).

[18] Although the Commission has not yet reviewed an application to become registered as a DTEF under the fast track procedure, it anticipates that such an application would likely also be sizeable and require a similar amount of time to review. Accordingly, the Commission is proposing to conform the DTEF expedited review period to that applicable to DCMs.

[19] *See* 7 U.S.C. 8(a)

[20] The proposal adds the requirement that DTEF application also must include a copy of any documents describing the applicant's legal status and governance structure.

[21] It should be noted that the ''additional information'' referred to herein is additional only in the sense that the proposal specifically provides that the information must be included in an application. In fact, this information has been requested as part of each of the DCM applications that have been reviewed to date.

manner in which the applicant will conduct trade practice, market, and financial surveillance. Based upon experience in reviewing DCM applications, the Commission recognizes that this additional information is necessary for Commission review of the application when determining whether the applicant satisfies the requirements for trading and registration criteria (DTEFs) or the designation criteria and core principles (DCMs). Finally, the proposal would eliminate the requirement that the applicant support requests for confidential treatment of information included in the application with reasonable justification. The Commission believes that the procedures provided in Commission Regulation 145.9, Petition for confidential treatment of information submitted to the Commission, should be followed by all applicants.

Under the proposal, the items required to be included in an application to be reviewed under the statutory 180-day review procedures are identical to those required to be included in an application to be reviewed under the expedited review procedures with the following exceptions for the expedited review procedure: (1) An applicant must request expedited review, and (2) an application submitted for expedited review must not be amended or supplemented by the applicant, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions. The proposal provides that amending or supplementing an application in a manner that is inconsistent with the above provision would result in termination of the expedited review.

The Commission is also proposing to modify the delegation of authority provisions applicable to applications for registration as a DTEF and for designation as a DCM. Currently, the rules provide for the delegation of authority to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, (1) to terminate the fast-track review of both types of applications and (2) to designate an applicant as a DCM subject to conditions. The Commission is proposing to modify and standardize the delegation of authority as it applies to DTEF and DCM applicants. Thus, under the proposal, the Commission would also delegate to the Director of the Division of Market Oversight, with the concurrence of the General Counsel, the authority to stay the running of the 180-day statutory review period for both types of applications if they are materially incomplete, as is provided under Section 6(a) of the Act. Because one result of the proposed amendments would be that registration as a DTEF and designation as a DCM would involve affirmative action on the part of the Commission, the proposal would rescind the delegation of the authority to designate the applicant as a DCM subject to conditions.

Finally, the Commission is proposing to reorganize the sequence of paragraphs in the rules where appropriate and to make minor word changes and deletions in order to clarify the application requirements. The Commission is also proposing to delete certain guidance regarding applications for designation as that information duplicates information available elsewhere in part 38.[22]

The Commission continues to encourage applicants to consult with Commission staff prior to formally submitting a DTEF or DCM application to help ensure that an application, once submitted, will be reviewed in a timely manner. The Commission encourages interested parties, particularly prior applicants, to comment upon these proposals.

Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect DCMs and DTEFs. The Commission has previously established certain definitions of small entities to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[23] In its previous determinations, the Commission has concluded that DCMs and DTEFs are not small entities for the purpose of the RFA.[24]

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that the trading facilities covered by these rules would not be small entities for purposes of the RFA.

B. The Paperwork Reduction Act

This proposed rulemaking affects information-collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Rules Relating to part 37, Establishing Procedures for Entities to be Registered as Derivatives Transaction Execution Facilities, OMB Control Number 3038–0053. The proposed rules will not change the burden previously approved by OMB. The estimated burden was calculated as follows:

Estimated number of respondents: 10.

Annual responses by each respondent: 1.

Total annual responses: 10.

Estimated average hours per response: 200.

Annual reporting burden: 2,000.

Collection of Information: Rules Relating to part 38, Establishing Procedures for Entities to Become Designated as Contract Markets, OMB Control Number 3038–0052. The proposed rules will not change the burden previously approved by OMB. The estimated burden was calculated as follows:

Estimated number of respondents: 10.

Annual responses by each respondent: 1.

Total annual responses: 10.

Estimated average hours per response: 300.

Annual reporting burden: 3,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

[22] The guidance provided in 17 CFR 38.3(b) is discussed more completely in Appendices A and B to part 38.

[23] 47 FR 18618, 18618–21 (Apr. 30, 1982).

[24] 47 FR 18618, 18619 (Apr. 30, 1982) (discussing DCMs); 66 FR 42256, 42268 (Aug. 10, 2001) (discussing DTEFs).

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collecting 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

C. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) requires the Commission to ''consider the costs and benefits'' of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed amendments are based upon past experience in reviewing DCM applications, and in light of the Commission's intention to post all such applications on its Web site for public review and comment, and are intended to facilitate increased flexibility, consistency and increased public input. The proposed amendments impose limited new submission obligations on entities seeking designation as DCMs or registration as DTEFs with the Commission. The proposed amendments establish the premise that all designation and registration applications are to be reviewed under the statutory 180-day review process unless otherwise requested and set new parameters for the expedited review of such applications and for the termination of such expedited review. These parameters create a useful and forward-looking expedited review process. Under the proposed rules, the Commission will review and take affirmative action upon designation and registration applications in an abbreviated time frame that adequately protects the interests of all market participants and the public. The proposed rules establish flexible expedited review procedures that allow the Commission to efficiently terminate expedited review when requested to do so by the applicant, or when necessary because of the submission of materially incomplete, novel or complex, or substantially amended or supplemented applications.

After considering these factors, the Commission has determined to propose the revisions to parts 37 and 38 set forth below. The Commission specifically invites public comment on its application of the criteria contained in section 15(a) of the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule with their comment letters.

List of Subjects

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 2, 3, 4, 4c, 5, 5a and 8a of the Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7a and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Revise § 37.5 to read as follows:

§ 37.5 Procedures for registration.

(a) *Notification by contract markets.* (1) To operate as a registered derivatives transaction execution facility pursuant to Section 5a of the Act, a board of trade that is designated as a contract market, which is not a dormant contract market as defined in Section 40.1 of this chapter, must:

(i) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (as defined in Section 40.1 of this chapter) or a list of the designated contract market's rules that apply to the operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of Section 5a(b) of the Act; and

(B) The criteria for registration under Section 5a(c) of the Act.

(ii) Comply with the core principles for operation under Section 5a(d) of the Act and the provisions of this part 37.

(2) Before using the notification procedure of paragraph (a)(1)(i) of this section for registration as a derivatives transaction execution facility, a dormant contract market, as defined in § 40.1 of this chapter, must reinstate its designation under § 38.3(a)(3) of this chapter.

(b) *Application Procedures—(1) Statutory (180-day) review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility shall file an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (b)(2) of this section, the Commission will review the application for registration as a derivatives transaction execution facility pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, register the applicant as a derivatives transaction execution facility subject to conditions.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37.

(ii) The application must include the following:

(A) The derivatives transaction execution facility's rules (as defined in § 40.1 of this chapter);

(B) Any technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, descriptions of the trading mechanism or algorithm used or to be used by such facility, and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a requirement for trading or a registration criterion (final, executed copies of such documents must be submitted prior to registration);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market, and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 37.5(b)(1)(ii)(A)–(E) enable or empower the applicant to comply with each requirement for trading and registration criterion (a regulatory chart); and

(G) To the extent that any of the items in § 37.5(b)(1)(ii)(A)–(E) raise issues that are novel, or for which compliance with a requirement for trading or condition for registration is not self-evident, an explanation of how that item and the application satisfy the requirements for trading and registration criteria.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility may request that its application be reviewed on an expedited basis and that the applicant be registered as a derivatives transaction execution facility not later than 90 days after the date of receipt of the application for registration by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 37.5(c), the Commission will register the applicant as a derivatives transaction execution facility during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of Sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37;

(ii) The application must include the items described in Sections 37.5(b)(1)(ii) and (iii); and

(iii) The applicant must not amend or supplement the application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during the 90-day review period.

(c) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (b)(2) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section, and will review the application under the 180-day time period and procedures of Section 6(a) of the Act, if it appears to the Commission that the application: (i) is materially incomplete, (ii) fails in form or substance to meet the requirements of this part, (iii) raises novel or complex issues that require additional time for review, or (iv) is amended or supplemented in a manner that is inconsistent with Section 37.5(b)(2)(iii) above. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(2) The termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 37.5(b)(2)(iii) above.

(d) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1), (b)(1) or (b)(2) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the applicant seeking registration under Section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (b)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

(f) *Request for withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraphs (b)(1) or (b)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for registration was pending with the Commission.

(g) *Request for vacation of registration.* A registered derivatives transaction execution facility may vacate its registration under Section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was registered by the Commission.

(h) *Guidance for applicants.* Appendix A to this part provides guidance on how the registration criteria in Section 5a(c) of the Act can be satisfied.

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Revise § 38.3 to read as follows:

§ 38.3 Procedures for designation.

(a) Application procedures—(1) Statutory (180-day) review procedures. A board of trade desiring to be designated as a contract market shall file an application for designation with the Secretary of the Commission at its

Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(2) of this section, the Commission will review the application for designation as a contract market pursuant to the 180-day timeframe and procedures specified in Section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, designate the applicant as a contract market subject to conditions.

(i) The applicant must demonstrate compliance with the criteria for designation of Section 5(b) of the Act, the core principles for operation of Section 5(d) of the Act and the provisions of this part 38.

(ii) The application must include the following:

(A) A copy of the applicant's rules (as defined in Section 40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure, including governance fitness information;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principle (final, executed copies of such documents must be submitted prior to designation);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market, and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 38.3(a)(1)(ii)(A) through (E) enable or empower the applicant to comply with each designation criterion and core principle (a regulatory chart); and

(G) To the extent that any of the items in § 38.3(a)(1)(ii)(A) through (E) raise issues that are novel, or for which compliance with a designation criterion or a core principle is not self-evident, an explanation of how that item and the application satisfy the designation criteria or the core principles.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to Section 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be designated as a contract market may request that its application be reviewed on an expedited basis and that the applicant be designated as a contract market not later than 90 days after the date of receipt of the application for designation by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in Section 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to § 38.3(b), the Commission will designate the applicant as a contract market during the 90-day period. If deemed appropriate by the Commission, the designation may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38;

(ii) The application must include the items described in §§ 38.3(a)(1)(ii) and (iii); and

(iii) The applicant must not amend or supplement the application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during the 90-day review period.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(2) of this section, the Commission shall notify the applicant seeking designation that the Commission is terminating review under this section, and will review the application under the 180-day time period and procedures of Section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete,

(ii) Fails in form or substance to meet the requirements of this part,

(iii) Raises novel or complex issues that require additional time for review, or

(iv) Is amended or supplemented in a manner that is inconsistent with § 38.3(a)(2)(iii) above. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(2) The termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 38.3(a)(2)(iii) above.

(c) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) or (a)(2) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, authority to notify the applicant seeking designation under Section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(2) of this section is terminated.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for withdrawal of application for designation.* An applicant for designation may withdraw its application submitted pursuant to paragraphs (a)(1) or (a)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for designation was pending with the Commission.

(f) *Request for vacation of designation.* A designated contract market may vacate its designation under Section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of designation shall not affect any action

taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(g) *Guidance for applicants.* Appendix A to this part provides guidance on how the criteria for designation under section 5(b) of the Act can be satisfied. Appendix B to this part provides guidance on how the core principles of section 5(d) of the Act can be satisfied.

Issued in Washington, DC, this 26th day of August, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–19946 Filed 8–31–04; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124405–03]

RIN 1545–BC13

Optional 10-Year Writeoff of Certain Tax Preferences; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on July 20, 2004 (69 FR 43367), that provides guidance on the time and manner of making an election under section 59(e) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Eric B. Lee (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–124405–03) that is the subject of this correction is under section 59(e) of the Internal Revenue Code.

Need for Correction

As published, REG–124405–03 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–124405–03), that was the subject of FR Doc. 04–16474, is corrected as follows:

1. On page 43368, column 2, in the preamble under the paragraph heading ''*Explanation of Provisions*'', third paragraph, line 18, the language, ''expenditures subject to the section 59(e)'' is corrected to read ''Expenditures subject to the section 59(e) election''.

§ 1.59–1 [Corrected]

2. On page 43369, column 1, § 1.59–1(b)(1), line 8, the language, ''the section 59(e) begins. A taxpayer'' is corrected to read ''the section 59(e) election begins. A taxpayer''.

3. On page 43369, column 1 § 1.59–1(b)(1), line 19, the language, ''section 59(e) begins. Additionally, the'' is corrected to read ''section 59(e) election begins. Additionally, the''.

Cynthia E. Grigsby,

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

[FR Doc. 04–19947 Filed 8–31–04; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL MEDIATION BOARD

29 CFR Part 1210

Administration of Arbitration Programs

AGENCY: National Mediation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Mediation Board (NMB) is extending the public comment period for receipt of comments on its notice of proposed rulemaking entitled ''Administration of Arbitration Programs'' that was published in the **Federal Register** on August 9, 2004 (69 FR 48177).

DATES: Comments must be in writing and must be received by September 20, 2004.

ADDRESSES: Submit written comments to: Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250—East, Washington, DC 20005. Attn: NMB Docket No. 2003–01N. You may submit your comments via letter, or electronically through the Internet to the following address: *arb@nmb.gov*. If you submit your comments electronically, please put the full body of your comments in the text of the electronic message and also as an attachment readable in MS Word. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 692–5086. Please cite NMB Docket No. 2003–01N in your comment.

FOR FURTHER INFORMATION CONTACT: Roland Watkins, NRAB Administrator, 1301 K Street, NW., Suite 250 East, Washington, DC 20005 (telephone: 202–692–5000).

SUPPLEMENTARY INFORMATION: On Monday, August 8, 2004, the National Mediation Board published a notice of proposed rulemaking requesting public comment on the Board's proposal to establish a new Part 1210 in its rules concerning the ''Administration of Arbitration Programs—National Railroad Adjustment Board (NRAB), Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs) (69 FR 48177). The closing date for receipt of public comments was September 8, 2004.

After further consideration, the Board is extending the comment period by twelve (12) days. Therefore, the closing date for receipt of public comments is now September 20, 2004.

June D.W. King,

Acting National Railroad Adjustment Board Administrator.

[FR Doc. 04–19878 Filed 8–31–04; 8:45 am]

BILLING CODE 7550–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–04–101]

RIN 1625–AA08

Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent local regulations for the Columbus Day Regatta. The event is held annually from 10 a.m. to 5 p.m. on Saturday and Sunday of Columbus Day weekend on Biscayne Bay, Miami, Florida. The regulations create a regulated area that temporarily limits the movement of non-participant vessels. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before October 1, 2004.

ADDRESSES: You may mail comments and related material to Sector Miami, 100 MacArthur Causeway, Miami

Beach, Florida 33139. Sector Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Miami between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn, Coast Guard Sector Miami, Miami Beach, Florida, (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–04–101), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Miami at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Columbus Day Regatta, Inc., sponsors a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 feet, that participate in the event. The race takes place in Biscayne Bay, from Dinner Key to Soldier Key, Saturday and Sunday during the second weekend in October (Columbus Day Weekend). Approximately 50 spectator craft, and several hundred additional vessels, transit the area for the annual event. These regulations are intended to provide for the safety of life on the waters of Biscayne Bay during the event by controlling traffic in the regulated area.

Discussion of Proposed Rule

This rule creates a regulated area and prohibits non-participant vessels from entering the regulated area without the permission of the Coast Guard Patrol Commander. When the Coast Guard Patrol Commander determines that it is safe for vessels to transit the regulated area, vessel traffic may resume normal operations at the completion of the scheduled races and exhibitions, and between scheduled racing events. The regulated area encompasses all waters within the following points: (A) 25° 43′ 24″ N, 080° 12′ 30″ W; (B) 25° 43′ 24″ N, 080° 10′ 30″ W; (C) 25° 33′ 00″ N, 080° 11′ 30″ W; (D) 25° 33′ 00″ N, 080° 15′ 54″ W; (E) 25° 40′ 00″ N, 080° 15′ 00″ W.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Entry into the regulated area is prohibited for only limited time periods. Additionally, when the Coast Guard Patrol Commander determines that it is safe for vessels to transit the regulated area, vessel traffic may be allowed to resume normal operations at the completion of scheduled races and exhibitions and between scheduled racing events. Also, vessels may otherwise be allowed to enter the regulated area with permission of the Coast Guard Patrol Commander. Finally, advance notifications to the maritime community through marine information broadcasts will allow mariners to adjust plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Biscayne Bay, between Dinner Key and Soldier Key, from 10 a.m. to 5 p.m., on the Saturday and Sunday of Columbus Day weekend. The regulations will only be in effect for 2 days in an area of limited commercial traffic. Also, vessel traffic will be allowed to resume normal operations at the completion of scheduled races and exhibitions, and between scheduled racing events, when the Coast Guard Patrol Commander determines it is safe to do so. Vessels may otherwise be allowed to enter the regulated area with permission of the Coast Guard Patrol Commander.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.729 to read as follows:

§ 100.729 Columbus Day Regatta, Biscayne Bay, Miami, FL.

(a) *Regulated area.* A regulated area is established for the Columbus Day Regatta, Biscayne Bay, Miami, Florida. The regulated area encompasses all waters within the following points: (1) 25° 43′ 24″ N, 080° 12′ 30″ W; (2) 25° 43′ 24″ N, 080° 10′ 30″ W; (3) 25° 33′ 00″ N, 080° 11′ 30″ W; (4) 25° 33′ 00″ N, 080° 15′ 54″ W; (5) 25° 40′ 00″ N, 080° 15′ 00″ W

(b) *Definitions. Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Station Miami Beach.

Law Enforcement Vessels are those vessels that are clearly marked and identifiable as being on government non-commercial service and authorized to that effect, including any boat embarked on such vessels.

(c) *Special local regulations.* (1) All vessels and persons with the exception of those participating in the Columbus Day Regatta are prohibited from entering into the regulated area without permission from the Coast Guard Patrol Commander.

(2) Each day, at the completion of scheduled races and exhibitions, and departure of participants from the regulated area, the Coast Guard Patrol Commander may permit traffic to resume normal operations.

(3) Between scheduled racing events, the Coast Guard Patrol Commander may permit traffic to resume normal operations for a limited time.

(4) A succession of not fewer than 5 short whistle or horn blasts from a Coast Guard patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision.

(5) The provisions in this paragraph do not apply to law enforcement vessels or their crews.

(d) *Effective Period:* This rule is effective annually from 10 a.m. until 5 p.m. Saturday and Sunday during the second weekend in October (Columbus Day weekend).

Dated: August 10, 2004.

D.B. Peterman,

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

[FR Doc. 04–19913 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–096]

RIN 1625–AA09

Drawbridge Operation Regulations; Annisquam River, Danvers River, Fore River, and Saugus River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of four Massachusetts Highway Department bridges; the Blynman (SR127) Bridge, mile 0.0, across the Annisquam River; the Kernwood Bridge, mile 1.0, across the Danvers River; the Quincy Weymouth SR3A Bridge, mile 2.8, across the Fore River; and the Fox Hill (SR107) Bridge, mile 2.5, across the Saugus River, Massachusetts. The bridge owner requested that the four bridges may operate on an advance notice basis from noon to 6 p.m. on Thanksgiving Day each year. This action is expected to allow the draw tenders to spend the holiday with their families while still meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before October 1, 2004.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–096), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Annisquam River and Blynman Canal

The Blynman (SR127) Bridge, mile 0.0, across the Annisquam River has a vertical clearance of 7 feet at mean high water and 16 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.586.

Danvers River

The Kernwood Bridge, at mile 1.0, across the Danvers River has a vertical clearance of 8 feet at mean high water and 17 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR § 117.595(c).

Fore River

The Quincy Weymouth (SR3A) Bridge, at mile 2.8, across the Fore River has a vertical clearance of 45 feet at mean high water and 55 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR § 117.621.

Saugus River

The Fox Hill (SR107) Bridge, at mile 2.5, across the Saugus River has a vertical clearance of 6 feet at mean high water and 16 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR § 117.618(c).

The owner of the bridges, Massachusetts Highway Department (MHD), requested a change to the drawbridge operation regulations for the above four bridges to allow the bridges to operate on an advance notice basis on Thanksgiving Day each year.

The existing drawbridge operation regulations already allow the four bridges to operate on an advance notice basis on Christmas and New Years Day each year. Therefore, it is expected that adding Thanksgiving Day to that existing requirement should not impact navigation adversely since there have been very few requests to open these bridges on Thanksgiving Day in past years.

The Coast Guard believes this rule is reasonable because the bridges would still open on demand at any time on Thanksgiving Day after the advance notice is given.

Discussion of Proposed Rule

Annisquam River and Blynman Canal

This proposed rule would revise 33 CFR 117.586, which details the operating regulations for the Blynman (SR127) Bridge. This proposed rule would allow the bridge owner to require a two-hour advance notice for bridge openings on Thanksgiving Day from noon to 6 p.m. each year.

Danvers River

This proposed rule amends 33 CFR 117.595 by revising paragraph (c), which details the operating regulations for the Kernwood Bridge.

This proposed rule would allow the bridge owner to require a one-hour advance notice for bridge openings from noon to 6 p.m. on Thanksgiving Day each year.

Fore River

This proposed rule amends 33 CFR 117.621 by revising paragraph (c), which details the holiday operating regulations for the Quincy Weymouth SR3A Bridge.

This proposed rule would allow the bridge owner to require a two-hour advance notice for bridge openings from noon to 6 p.m. on Thanksgiving Day each year.

Saugus River

This proposed rule amends 33 CFR 117.618 by revising paragraph (c), which details the operating regulations for the Fox Hill SR107 Bridge. This proposed rule would allow the bridge owner to require a one-hour advance notice for bridge openings from noon to 6 p.m. on Thanksgiving Day each year.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866,

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

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

This conclusion is based on the fact that the bridges will continue to open on signal at any time after the advance notice is given.

Small Entities

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

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

This conclusion is based on the fact that the bridges will continue to open on signal at any time after the advance notice is given.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, 408 Atlantic Avenue, Boston, MA 02110–3350. The telephone number is (617) 223–8364. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.586 to read as follows:

§ 117.586 Annisquam River and Blynman Canal.

The draw of the Blynman (SR127) Bridge shall open on signal, except that, from noon to 6 p.m. on the fourth Thursday in November (Thanksgiving Day), 6 p.m. on December 24 to midnight on December 25, and from 6 p.m. on December 31 to midnight on January 1, the draw shall open on signal if at least a two-hour advance notice is given by calling the number posted at the bridge.

3. Section 117.595 is amended by revising paragraph (c) to read as follows:

§ 117.595 Danvers River.

* * * * *

(c) The Kernwood Bridge, at mile 1.0, shall operate as follows:

(1) From May 1 through September 30, midnight to 5 a.m., and from October 1 through April 30, 7 p.m. to 5 a.m., draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

(2) From noon to 6 p.m. on the fourth Thursday in November (Thanksgiving Day) and all day on December 25 and January 1, the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

4. Section 117.618 is amended by revising paragraph (c) to read as follows:

§ 117.618 Saugus River.

* * * * *

(c) The Fox Hill (SR107) Bridge, at mile 2.5, shall operate as follows:

(1) The draw shall open on signal, except that, from October 1 through May 31, from 7 p.m. to 5 a.m., the draw shall open after at least a one-hour advance notice is given by calling the number posted at the bridge.

(2) From noon to 6 p.m. on the fourth Thursday in November (Thanksgiving Day), and all day on December 25, and January 1, the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

5. Section 117.621 is amended by revising paragraph (c) to read as follows:

§ 117.621 Fore River.

* * * * *

(c) From noon to 6 p.m. on the fourth Thursday in November (Thanksgiving Day), from 6 p.m. on December 24 to midnight on December 25, and from 6 p.m. on December 31 to midnight on January 1, the draw shall open on signal after at least a two-hour advance notice is given by calling the number posted at the bridge.

Dated: August 23, 2004.

David P. Pekoske,

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

[FR Doc. 04–19958 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OAR–2003–0079; FRL–7802–1]

RIN 2060–AJ99

Draft Nitrogen Oxides Exemption Guidance for Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has developed draft guidance for Nitrogen Oxides (NO_X) Exemptions under the 8-hour ozone standard to accompany the proposed rule to implement the 8-hour ozone National Ambient Air Quality Standard (NAAQS), which was published on June 2, 2003 (68 FR 32802). If, after notice and comment, we adopt approaches other than those reflected by the draft guidance, the regulatory text we promulgate at the time of our final action will incorporate the approaches we adopt.

DATES: Comments must be received on or before October 1, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Grano, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3292 or by e-mail at: *grano.doug@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550 or by e-mail at *gerth.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

The draft guidance for NO_X Exemptions under the 8-hour ozone standard is intended to accompany the June 2, 2003 proposed rule to implement the 8-hour ozone NAAQS. The draft guidance describes, in detail, how to implement the NO_X exemption provisions contained in section 182(f) of the Clean Air Act and EPA's rationale. The June 2, 2003 proposed rule contains the background discussion for the section 182(f) provisions.

A. How Can I Get Copies of This Document and Other Related Information?

The EPA has established an official public docket for this action under Docket ID No. OAR 2003–0079. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at 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 Public Reading Room is (202) 566–1744, and the telephone number for the OAR 2003–0079 Docket is (202) 566–1742.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EDOCKET. Information claimed as confidential business

information (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. Publicly available docket materials that are not available electronically may be viewed at the EPA Docket Center.

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.

The draft guidance for NO_X Exemptions under the 8-hour ozone standard is also available for public inspection at EPA's Web site at *http://www.epa.gov/ttn/naags/ozone/o3imp8hr.* In addition, copies can be obtained from the Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Electronically: If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit you 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.

EPA Dockets: Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the outline instructions for submitting comments. Once in the system, select search, and then key in Docket ID No. OAR 2003–0079. 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.

E-mail: Comments may be sent by electronic mail (e-mail) to *grano.doug@epa.gov*, Attention Docket ID No. OAR 2003–0079. 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.

Disk or CD ROM: You may submit comments on a disk or CD ROM that you mail to the mailing address identified. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail: Send your comment to: Nitrogen Oxides Exemption Guidance for Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard, Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR 2003–0079.

By Hand Delivery or Courier: Deliver your comments to: (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2003–0079. Such deliveries are only accepted during the Docket's normal hours of operations.

By Facsimile: Fax your comments to: (202) 566–1741, Attention Docket ID. NO. OAR–2003–0079.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic pubic docket or by e-mail. Send or deliver information identified as CBI only to the following address: EPA, 109 TW Alexander Dr., RTP, NC 27709, Attn: Roberto Morales, MS C404–02, Attention Docket ID No. OAR 2003–0079. 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 an questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7408, 42 U.S.C. 7410, 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: August 5, 2004.

Gregory A. Green,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–19921 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0006, FRL–7808–3]

RIN 2060–AK32

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On April 12, 2001 (66 FR 19006), the EPA issued national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production under section 112(d) of the Clean Air Act (CAA). This action would amend the compliance requirements for vegetable oil production processes that exclusively use a qualifying low-HAP extraction solvent. The amendments are being made to require only the necessary recordkeeping and reporting requirements for facilities using the low-HAP extraction solvent compliance option.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the direct final rule. If we receive no significant adverse comments, we will take no further action on the proposed amendments. If we receive significant adverse comments, we will withdraw only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of today's **Federal Register** is withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final rule based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received on or before October 1, 2004, unless a hearing is requested by September 13, 2004. If a timely hearing request is submitted, we must receive written comments on or before October 18, 2004.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2004–0006, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment systems, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epamail.epa.gov*
- Fax: 202–566–1741
- Mail: (in duplicate, if possible) to Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: (in duplicate, if possible) to: Air and Radiation Docket, Attention Docket ID Number OAR–2004–0006, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2004–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA facility complex in Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, U.S. EPA, Waste and Chemical Processes Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3078, facsimile number (919) 541–3207, electronic mail address: *nizich.greg@epa.gov.* Questions regarding the applicability of this action to a particular entity should be directed to the appropriate EPA Regional Office representative.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a ''regulated entity.'' Categories and entities potentially regulated by this action include those listed in the following table:

Category	SIC code	NAICS	Examples of regulated entities
Industry	2074	311223	Cottonseed oil mills.
	2075	311222	Soybean oil mills.
	2076	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2079	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2048	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	2041	311211	Flour and other grain mill product mills.
	2046	311221	Wet corn milling.
Federal government	.....	.....	Not affected.
State/local/tribal government	.....	.....	Not affected.

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 40 CFR part 63, subpart GGGG. If you have any questions regarding the applicability of this action to a particular entity, consult the individual described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting Comments Containing CBI. Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. (For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI). In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Willie Russell, Waste and Chemical Processes Group, Emissions Standards Division, (C439–04), Research Triangle Park, NC 27711, telephone number (919) 541–5034, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Russell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emissions standards.

Direct Final Rule. A direct final rule identical to the proposal is published in the Rules and Regulations section of today's **Federal Register**. If we receive any significant adverse comment pertaining to the amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments concerning the withdrawn amendments in a subsequent final rule. If no relevant adverse comments are received, no further action will be taken on the proposal and the direct final rule will become effective as provided in that notice.

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, see the direct final rule.

Statutory and Executive Order Reviews. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We believe there will be little or no impact on small entities because the purpose of today's proposed amendments is to simplify the rule by limiting the recordkeeping and reporting requirements for facilities utilizing a low-HAP extraction solvent exclusively in the vegetable oil production process. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

For information regarding other administrative requirements for this action, please see the direct final rule located in the Rules and Regulations section of today's **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–19920 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 04–137]

Telecommunication Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document seeks public comment on various matters concerning Internet Protocol (IP) Relay and Video Relay Service (VRS), including the appropriate cost recovery methodology for VRS, possible mechanisms to determine which IP Relay and VRS calls are intrastate and which are interstate for purposes of reimbursement, whether IP Rely and VRS should become mandatory TRS services, whether IP Relay and VRS should be required to be offered 7 days a week, 24 hours a day, and whether, when, and how we should apply the speed of answer rule to the provision of VRS. We also seek comment on redefining the composition, functions, and responsibilities of TRS Advisory Council, and on issues relating to the abuse of CAs by persons using TRS.

DATES: Comments are due on or before October 18, 2004 and reply comments are due on or before November 15, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Government Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY) or e-mail *Cheryl.King@fcc.gov*.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rulemaking (FNPRM), Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, FCC 04–134, does not contain proposed information collection requirement subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. This is a summary of the Commission's *FNPRM*, adopted June 10, 2004, and released June 30, 2004. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before 45 days after **Federal Register** publication, and reply comments on or before 75 days after **Federal Register** publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc. will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file by paper should also

submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Room 6–C410, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, **CG Docket No. 03–123,** type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *FNPRM* may be purchased from the Commission's duplication contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customer may contact BCPI, Inc. at their Web site: *www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This *FNPRM* can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Initial Paperwork Reduction Act of 1995 Analysis

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

Synopsis

In this *FNPRM*, the Commission addresses a number of outstanding issues with respect to VRS IP Relay including: (1) The appropriate cost recovery methodology for VRS; (2) what type of mechanism the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate; (3) whether IP Relay and/or VRS should become mandatory forms of TRS; (4) whether IP Relay and/or VRS should be required to be offered 7 days a week, 24 hours a day; and (5) whether the Commission should adopt a speed of answer requirement for VRS, and if so, what should it be and how should it be phased-in. The Commission also raises the issues of whether there should be separate compensation rates for traditional TRS and IP Relay, and whether the compensation payments for VRS should be established for a two-year period instead of a one-year period. Further, the Commission seeks additional comment on issues concerning the certification and oversight of OP Relay and VRS providers. The Commission also seeks comment on the TRS Advisory Council, including its composition and the role it plays in advising the TRS Fund Administrator on TRS issues. Finally, the Commission raises issues with regard to recurring problems with the abuse of CAs by callers who seek to either harass the CA, or harass a called party, behind the apparent anonymity of IP Relay call. As in the past, the Commission goal is to continue to ensure that functionally equivalent TRS services are available to consumers, and to ensure the ongoing integrity of the Interstate TRS Fund.

Initial Regulatory Flexibility Analysis (CG Docket No. 03–123)

As required by the Regulatory Flexibility Act (RFA), (*see* 5 U.S.C. 603; the RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Statute 857 (1996)), the Commission has prepared this present Initial Regulatory Flexibility Analysis (*IFRA*) of the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM*. *See* 5 U.S.C. 603. We also expect that we could certify this action under 5 U.S.C. 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there are not a substantial number of small entities that may be affected by our action. Written public comments are requested on this *IFRA*. Comments must be identified as responses to the *IFRA* and must be filed by the deadlines for comments on the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this *IFRA*, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603 (a). In addition, the *FNPRM* and *IFRA* (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the FNPRM

The Commission is issuing this *FNPRM* to seek comment on cost recovery methodology for VRS, what type of mechanism the Commission might adopt to determine which IP Relay and VRS calls are interstate and which are intrastate, whether IP Relay and VRS should become mandatory forms of TRS and offered 24/7; the appropriate composition and role of the TRS Advisory Council; certification and oversight of IP Relay and VRS providers; and the issue of abuse and harassment of TRS CAs. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users in a manner that will be consistent with Congress' mandate under 47 U.S.C. 225(d)(2) that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology.

Specifically, the *FNPRM* seeks comment on several IP Relay related issues, including: (1) What type of mechanism the Commission may adopt to determine whether IP Relay calls are intrastate or interstate (so that States would be required to pay for intrastate IP Relay calls and the Interstate TRS Fund would continue to reimburse interstate IP Relay calls); (2) whether IP Relay should be a mandatory service and be offered 24/7; and (3) whether there should be separate compensation rates for traditional TRS and IP Relay. The Commission also seeks comment on several VRS related issues including: (1) The appropriate cost recovery methodology for VRS; (2) what type of mechanism the Commission might adopt to determine which VRS calls are interstate and which are intrastate, (3) whether VRS should be a mandatory form of TRS and be offered 24/7; (4) whether a speed of answer rule specific to VRS should be adopted, and (5) whether the data reporting period for VRS should be different from the present one-year period. Additionally, the *FNPRM* seeks comment on certification and oversight of IP Relay and VRS providers. The Commission also seeks comment on whether the

composition of the TRS Advisory Council should be changed or expanded to include parties that represent the Interstate TRS Fund or any relevant interests not currently represented by the Council. Finally, the *FNPRM* seeks comment on whether the Commission should adopt TRS rules to curb abusive calls directed at the CA or the called party.

Legal Basis

The authority for actions proposed in this *FNPRM* may be found in sections 1, 4 (i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i), 154 (j), 201–205, 218 and 225.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. 5 U.S.C. 604(a)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4).

Below, we further describe and estimate the number of small entity licensees and regulates that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (August 2003) (*Trends in Telephone Service*). This source uses data that are current as of December 31, 2001.

Incumbent Local Exchange Carriers: Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 1,337 incumbent local exchange carriers, total, with approximately 1,032 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,032 ILECS that are small businesses possibly affected by our action.

Small Incumbent Local Exchange Carriers: We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Interexchange Carriers: Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2001 indicate that there are 261 interexchange carriers, total, with approximately 223 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more that 223 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers: Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, State-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. *See* National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *FNPRM* seeks comment on the adoption of a cost recovery methodology for VRS, and the possible means for determining which IP Relay and VRS calls are interstate and which are intrastate. The adoption of a cost

recovery methodology for VRS other than the current per minute compensation methodology may require VRS providers to maintain different records, although there would be no new reporting requirements. The adoption of a mechanism to determine which IP Relay and VRS calls are interstate and which are intrastate would require providers to keep records of interstate and intrastate calls; it may also change the type of reports and recordkeeping that IP Relay and VRS providers maintain, depending upon how IP Relay and VRS providers are currently maintaining their records. Presently, IP Relay and VRS providers report their costs for all calls and their record of minutes provided to the Interstate TRS Fund Administrator. If a mechanism were adopted to determine which IP Relay and VRS calls were interstate and which were intrastate, IP Relay and VRS providers would need a database to keep a record of calls and minutes of use that differentiate between interstate and intrastate calls.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take (among others) into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. 5 U.S.C. 603.

The proposals in the *FNPRM*, and the comments the Commission seeks regarding them, results from the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. *See, e.g.*, 47 U.S.C. 225. The guiding principle shaping these proposals is Congress's requirement that TRS keep pace with advancing technology and that the Commission's rules should not discourage the implementation of technological advances or improvements, as well as the mandate that TRS services be functionally equivalent to voice telephone services. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers. Because we believe that the number of small entities would be impacted by these proposals, and that the impact, if any, would be minor, it is premature to propose specific alternative that would minimize significant economic impact on small businesses. Further, since we believe the essence of the rules we may adopt pursuant to this proceeding will confer the benefits of a more streamlined approach to administering TRS on all entities, including small entities, we are further persuaded that it would be premature to consider alternative to the conferral of such benefits. However, we invite comment on specific alternative that may minimize the economic impact of the proposed rules on small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 218, and 225 of the Communications Act of 1934, as amended, 47 U.S.C 151, 152, 154(i), 154(j), 201–205, 218, and 225, this further notice of proposed rulemaking *is adopted*.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this further notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–18551 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD22 and RIN 2105–AD23

Withdrawal of Proposed Rulemaking Actions

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This document withdraws two Office of the Secretary (OST) notices of proposed rulemaking (NPRM) that have been superseded by the transfer to the Department of Homeland Security (DHS) of the Transportation Security Administration (TSA). We inadvertently did not transfer this rulemaking to TSA when TSA moved to the Department of Homeland Security.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4723; fax: (202) 366–9313; e-mail: *Jennifer.Abdul-Wali@ost.dot.gov*.

ADDRESSES: You may obtain a copy of this notice from the DOT public docket through the Internet at *http://dms.dot.gov*, docket number OST–1996–1437. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST–1996–1437 and request a copy of the notice entitled ''Withdrawal of Proposed Rulemaking Actions.''

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at *http://www.gpo.gov*.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended, an agency that maintains a system of records may exempt that system from some of the provisions of the Privacy Act; the decision to do so is subject to 5 U.S.C. 553, requiring notice and opportunity for public comment. When TSA was part of DOT, we published rulemaking proposals to exempt a number of systems of records maintained by TSA from provisions of the Privacy Act. When TSA moved to DHS (March 1, 2003), those rulemaking proceedings had not been completed; they were started anew and finished by DHS.

The Privacy Act record systems whose exemption proposals are affected by this action are:

1. The Transportation Security Enforcement Record System (TSER), which would have enabled TSA to maintain a civil enforcement and inspections system for all modes of transportation for which TSA has security-related duties. This system would have covered information

regarding violations and potential violations of TSA security regulations (TSRs), and would have been used, generally, to review, analyze, investigate, and prosecute violations of TSRs.

2. To facilitate TSA's performance of employment investigations for transportation workers, as required by 49 U.S.C. 114 and 44936, a system to be known as the Transportation Workers Employment Investigations system.

3. To facilitate TSA's performance of employment investigations for its own workers, a system to be known as the Personnel Background Investigation Files System.

4. Aviation Security-Screening Records would have enabled the TSA to maintain a security-screening system for air transportation. This system would have contained information regarding TSA's conduct of risk assessments required by 49 U.S.C. 114 and 44903. The system would have been used, generally, to review, analyze, and assess threats to transportation security and respond accordingly.

For the reason outlined above, the Department is withdrawing these proposals.

Issued in Washington, DC on July 19, 2004.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 04–19957 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2004–18940]

RIN–2126–AA89

Electronic On-Board Recorders for Hours-of-Service Compliance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests comments on potential amendments to its regulations concerning the use of on-board recording devices to document compliance with the Federal hours-of-service rules. Because our current regulations do not reflect the considerable advances in the technology used in current-generation recording devices (also known as electronic on-board recorders, or EOBRs), we seek information concerning issues that should be considered in the development of improved performance specifications for these recording devices. Our purpose is to ensure that any future requirements would be appropriate as well as reflect state-of-the-art communication and information management technologies.

DATES: Comments must be received on or before November 30, 2004.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA–2004–17286, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Agency Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents including those referenced in this document, or to read comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 provides that ''[t]he Secretary of Transportation may prescribe requirements for—(1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)).

This advance notice of proposed rulemaking (ANPRM) deals with ''safety of operation and equipment'' of motor carriers and ''standards of equipment'' of motor private carriers, and, as such, is well within the authority of the 1935 Act. FMCSA has allowed the use of automatic on-board recording devices to track drivers' hours of service since 1988 (49 CFR 395.15). The recorders authorized by § 395.15 are mostly mechanical in design. Rapid developments in electronic technology have made them increasingly obsolete. This ANPRM therefore addresses the possibility of allowing motor carriers to use modern EOBRs to document drivers' compliance with the hours-of-service requirements. In order to meet the requirements of the 1935 Act, EOBRs must reliably and accurately perform the functions for which they are designed. The ANPRM seeks information on a wide variety of questions related to that issue.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This ANPRM is concerned primarily with section 31136(a)(2) and (3). The hours-of-service regulations are

designed to ensure that driving time—one of the principal ''responsibilities imposed on the operators of commercial motor vehicles''—does ''not impair their ability to operate the vehicles safely.'' EOBRs that are properly designed, maintained, and used would enable motor carriers to track their drivers' on-duty and driving hours very accurately, thus permitting them to better prevent regulatory violations or excessive driver fatigue, but also allowing them to schedule vehicle and driver operations more efficiently. Driver compliance with the hours-of-service rules would help to ensure that ''the physical condition of [commercial motor vehicle drivers] is adequate to enable them to operate the vehicles safely.'' In short, FMCSA is attempting to evaluate the suitability of EOBRs to demonstrate compliance with and enforcement of the hours-of-service regulations, which in turn have major implications for the welfare of drivers and the safe operation of commercial motor vehicles (CMVs).

In addition, Sec. 408 of the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803, at 958) required the agency to issue an ANPRM ''dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including * * * automated and tamper-proof recording devices * * *) not later than March 1, 1996.'' The ANPRM was published on November 5, 1996 (61 FR 57252), the NPRM on May 2, 2000 (65 FR 25540), and the final rule on April 28, 2003 (68 FR 22456). FMCSA decided not to adopt EOBR regulations in 2003 but noted that it planned ''to continue research on EOBRs and other technologies, seeking to stimulate innovation in this promising area'' (68 FR 22488).

On July 16, 2004, the United States Court of Appeals for the District of Columbia Circuit vacated the 2003 final rule (*Public Citizen et al.* v. *FMCSA,* No. 03–1165) for reasons unrelated to EOBRs. In *dicta,* however, the court said that Sec. 408 of the ICC Termination Act ''required the agency, at a minimum, to collect and analyze data on the costs and benefits of requiring EOBRs'' [slip opinion, at 19]. This ANPRM, which has been under development for some time, is an effort to do just that.

Background

Ensuring safe driving of commercial motor vehicles is at the heart of the Federal hours-of-service regulations (49 CFR Part 395). The hours-of-service regulations apply to drivers of commercial motor vehicles, as defined in 49 CFR 390.5. One of the most important goals of the rules is to ensure that commercial vehicle operators do not drive for long periods without opportunities to obtain restorative sleep. Adequate sleep is an important contributor to human health. From the standpoint of highway safety, adequate sleep is necessary to ensure that a person is alert behind the wheel and able to respond appropriately to changes in the driving environment. Therefore, the hours-of-service rules prohibit CMV drivers from driving or being directed to drive more than a specified amount of time between mandatory off-duty periods.

The regulations also prohibit driving after a specific amount of cumulative on-duty time on both a daily and multiday basis. On-duty time is time spent driving and performing other duties at a motor carrier's direction. Under § 395.8, all motor carriers and drivers must keep records to track on-duty and off-duty time. FMCSA uses these records to carry out safety oversight activities, as do State agencies enforcing compatible State laws and regulations. Under an exception at § 395.1(e), a motor carrier whose drivers operate within a 100 air-mile radius of the normal work-reporting location may use ''time records,'' or time cards, to satisfy the hours-of-service recordkeeping requirement.

The methods of recording and documenting hours of service have been modified several times over the years. The Interstate Commerce Commission (ICC) first established a requirement for a ''Driver's Daily Log'' in 1940. In 1952, the ICC revised the format in *Ex Parte* No. MC–40, which reduced the number of drivers' duty status categories from 15 to 4 (17 FR 4422 at 4488, May 15, 1952). This latter revision added the familiar graph-grid recording format to the driver's log. In 1982, the document's name changed to ''Driver's Record of Duty Status (RODS)'' and additional minor changes were made (47 FR 53389, Nov. 26, 1982). Other additional minor revisions were made in subsequent years.

Current Regulations and Guidance on Automatic On-Board Recording Devices

Motor carriers began to look to automated methods of recording drivers' duty status records in the mid-1980s as a way to save drivers time and improve the efficiency of their compliance-assurance procedures. In April 1985 (50 FR 15269, Apr. 17, 1985), the Federal Highway Administration (FHWA), the predecessor agency to FMCSA within the U.S. Department of Transportation (DOT),[1] granted a waiver to Frito-Lay, Inc. to allow it to use on-board computers in lieu of requiring drivers to complete handwritten RODS. Nine other motor carriers were subsequently granted waivers.

In 1986, the Insurance Institute for Highway Safety (IIHS) petitioned FHWA to require the installation and use of automatic on-board recordkeeping systems. The petition was denied, and IIHS petitioned for reconsideration in February 1987.

In July 1987 (52 FR 26289, Jul. 13, 1987), FHWA published an advance notice of proposed rulemaking concerning on-board recording devices. FHWA followed with a notice of proposed rulemaking in March 1988 (53 FR 8228, Mar. 14, 1988) and a final rule in September of the same year (53 FR 38666, Sep. 30, 1988). The rule revised part 395 of the Federal Motor Carrier Safety Regulations by allowing motor carriers the flexibility to equip CMVs with an automatic on-board recording device (AOBRD) in lieu of requiring drivers to complete handwritten RODS. The term automatic on-board recording device was defined under § 395.2 as:

> * * * an electric, electronic, electromechanical, or mechanical device capable of recording driver's [sic] duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

The regulations at 49 CFR 395.15 cover a motor carrier's authority to require use of the devices; information requirements; the duty status and additional information that must be recorded; and the manner of recording change of duty status location. Entries must be made only by the driver. Drivers are required to note any failures in the performance of the device and to reconstruct records of their duty on blank RODS forms. For the benefit of both drivers and safety officials, especially law enforcement officers, an instruction sheet describing the operation of the automatic on-board recording device must be present in the vehicle.

Requirements for submission to the motor carrier of the RODS generated by automatic on-board recording devices are similar to those for handwritten RODS, except that the driver is not required to sign the record. Submission

[1] 1On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, 113 Stat. 1748). The statute established the Federal Motor Carrier Safety Administration within DOT. On January 4, 2000, the Secretary redelegated to FMCSA the motor carrier and driver authority previously delegated to FHWA (65 FR 220).

of the record(s) constitutes certification that all entries made are true and correct.

Performance requirements for AOBRDs (at 49 CFR 395.15(i)) are straightforward. The manufacturer must certify that the design of the device ''has been sufficiently tested to meet the requirements of this section and under the conditions it will be used.'' § 395.15(i)(1) The design must permit duty status to be updated only when the vehicle is at rest, unless the driver is registering the crossing of a State boundary. The AOBRD and support systems must be tamperproof ''to the maximum extent practicable.'' The AOBRD must provide a visual and/or audible warning to the driver if it ceases to function, and any sensor failures and edited data must be identified in the RODS printed from the device.

Finally, the AOBRD must be maintained and recalibrated according to the manufacturer's specifications; drivers must be adequately trained in the proper operation of the device; and the motor carrier must maintain a second (backup) copy of electronic hours-of-service files in a separate location.

In part because on-board recorder technology was so new and such a significant departure from paper RODS when the final rule was developed 16 years ago, the rule included at § 395.15(j) a provision to rescind a motor carrier's authority to use an AOBRD. Under this provision, the agency may order any motor carrier or driver to revert to using paper hours-of-service records if it determines that the carrier poses certain safety management control issues.

Although the 1988 final rule addressed the possibility that some tachographs [2] could conceivably comply with the provisions of § 395.15 (53 FR 38666, at 38669, ''This new definition is sufficiently broad to include computers and tachographs.''), FHWA subsequently determined that conventional mechanical tachographs do not comply with these requirements. The agency explained its decision in a letter of September 23, 1991, to Abbott Tachograph. A copy of this letter is in the docket, along with copies of all reports, memoranda of understanding, and letters referenced in this document.

At the time § 395.15 was issued, the technology to allow on-board recorders to communicate data wirelessly between the CMV and the motor carrier's base of operations did not exist on a widespread commercial basis. Thanks to emerging technologies used in these devices, the narrowly crafted on-board recorder regulation now needs to be revised. Various communications technologies, many of which include vehicle tracking using global positioning system (GPS)-based technologies, allow real-time transmission of a vehicle's location and other operational information. We call these current-generation recording EOBRs. By taking advantage of these technologies, a motor carrier can improve not only its scheduling of vehicles and drivers but also its asset management and customer service. In fact, some system providers offer applications for real-time hours-of-service monitoring that build upon the time- and location-tracking functions included in the providers' hardware and software products.

To bridge the gap between the current regulations and state-of-the-art technology, FMCSA has relied upon interpretations, regulatory guidance, pilot demonstration programs, and, most recently, exemptions concerning the use of on-board recorders.

Interpretations and Regulatory Guidance

A comprehensive update of regulatory guidance published on April 4, 1997 (65 FR 16369, at 16426) included two interpretations concerning AOBRDs. The first clarified that backup electronic records are not required if a paper record of duty status document is printed. The second underscored the prohibition against a driver's using an AOBRD to amend his or her duty status during a trip.

We recently added an interpretation concerning the use of algorithms in AOBRDs to identify the location of a change of duty status relative to the nearest city, town, or village. Added to the Motor Carrier Regulatory Guidance and Interpretation System (MCREGIS) in March 2003, this interpretation specifies that algorithms must be sufficiently accurate to ensure, through the on-board recorder's integral connection to the vehicle's systems, correlation between the driving time and distance traveled. Also, the location description for the duty status change must be sufficiently precise to enable enforcement personnel to quickly determine the CMV's geographic location on a standard map or road atlas. This regulatory interpretation is available on FMCSA's Web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/fmcsrguide.htm.*

GPS Technologies: Notice of Interpretation and Request for Participation

On April 6, 1998, FHWA published a notice of interpretation on GPS technology (63 FR 16697). The notice also announced a voluntary program whereby motor carriers using GPS and related safety management computer systems could enter into an agreement with the agency to use the systems in lieu of handwritten RODS or a conventional AOBRD. This program was offered as a pilot demonstration project consistent with the President's initiatives on reinventing government and regulatory reform. The project's intent was to demonstrate whether use of this technology by the motor carrier industry could improve compliance with the hours-of-service requirements while increasing operational efficiency and reducing paperwork burden. In June 1998, Werner Enterprises, Inc. (Werner) entered into a Memorandum of Understanding (MOU) with the agency to test the use of its system under such a pilot project.

At the time we entered into the MOU with Werner, certain features of GPS technology, wireless communications, and related computer systems were not readily adaptable to the provisions of § 395.15. However, the GPS-based systems that Werner proposed to pilot had other capabilities that would satisfy or go beyond these requirements. Table 1 of the notice of interpretation (63 FR 16697, at 16698, Apr. 6, 1998) describes these capabilities in relation to specific provisions of § 395.15. One notable difference was that, rather than being integrally linked to the vehicle to record driving time, the GPS system software employed algorithms that set on-duty and off-duty times using preprogrammed assumptions.

In a 1999 letter to FHWA, a safety advocacy organization stated that, based on information received from drivers, Werner's system did not appear to provide an accurate accounting of drivers' duty status under certain conditions, such as prolonged low speeds in traffic congestion. After an in-depth assessment, we concluded that under certain conditions the Werner system indeed failed to provide an accurate reporting of duty status or times. The agency required Werner to modify its GPS tracking and recording systems to ensure accurate documentation of drivers' duty status as mandated by 49 CFR Part 395.

In March 2002, FMCSA revised its MOU with Werner to address recording methods and the use of algorithms in the recording and reporting processes.

[2] The *Dictionary of Mechanical Engineering* defines a tachograph as an ''electronic device that records vehicle usage relative to time.'' (Naylor, G.H. F., *Dictionary of Mechanical Engineering,* 4th edition. Society of Automotive Engineers, Inc., Warrendale, Pennsylvania)

The changes included eliminating certain default duty status entries as well as revising the method of recording CMV speed and, more important, distance traveled. According to item 13 of the revised MOU:

> Both Werner and the FMCSA acknowledge that the FMCSA does not find the current Werner GPS-based (point-to-point) methodology of recording mileage acceptable. Werner's GPS methodology consistently understates the distance traveled. Werner agrees to identify and implement an accurate means of determining distance traveled, within 120 days of the signing of this agreement.

In effect, the revised MOU required Werner to obtain engine data through the tractor's electronic communications network in order to provide an ''integral synchronization'' with the vehicle's operation.

In December 2003 (68 FR 69117, Dec. 11, 2003), FMCSA published a notice of intent to grant an exemption to Werner Enterprises, Inc., thereby allowing the carrier to use GPS technology and complementary computer software programs to monitor and record its drivers' hours of service. The terms and conditions for the proposed exemption were the same as those of the revised MOU for the Werner pilot demonstration project, with a few exceptions. The need to rely on an exemption to allow Werner's use of these advanced technologies for RODS purposes underscores the importance of aligning EOBR performance specifications with state-of-the-art technologies.

The comment period for this notice of intent ended on January 12, 2004. Comments may be viewed at *http://dms.dot.gov,* Docket number 15818.

Proposal To Mandate On-Board Recording Devices

Both the 1988 final rule and the 1998 notice of interpretation allowed the use of automated recording systems as an alternative to handwritten RODS. However, the prospect of a mandatory use requirement for these systems has provoked concern and debate.

On February 5, 1990, FHWA received from the National Transportation Safety Board (NTSB) Safety Recommendation H–90–28: ''Require automatic/tamper-proof on-board recording devices such as tachographs or computerized logs to identify commercial truck drivers who exceed hours-of-service regulations.'' The NTSB classified this safety recommendation ''Closed—Unacceptable Action'' on July 7, 1998. While conceding that FHWA's ''deliberately paced research and symposium approach may yield useful information,'' the NTSB found ''no indication of aggressive research and prompt action to develop and require advanced technical solutions to address the intent of Safety Recommendation H–90–28.''

On August 3, 1995, IIHS, Advocates for Highway and Auto Safety, and several other highway safety and advocacy organizations petitioned FHWA to require on-board recorders in CMVs. The petitioners believed the mandated use of these devices would improve hours-of-service compliance, thereby reducing the number of fatigued drivers and fatigue-related crashes.

The DOT Office of Inspector General also referred to FHWA's proposed requirement for EOBRs in its report, *Top Ten Management Issues* (Report Number PT–2001–017, January 18, 2001, available at *http://www.oig.dot.gov/control_numbers.php).* The Office of Inspector General report stated:

> Driver hours-of-service violations and falsified driver logs continue to pose significant safety concerns. Research has shown that fatigue is a major factor in commercial vehicle crashes. During roadside safety inspections, the most frequent violation cited for removing a driver from operation is exceeding allowed hours of service. Use of electronic recorders and other technologies to manage the hours-of-service requirements has significant safety value. FMCSA's April 2000 proposed rulemaking would revise the hours of service by reducing the driving time allowed within a 24-hour period and by phasing in, over a period of years, the use of on-board electronic recorders to document drivers' hours of service. The Congress prohibited the Department from adopting a final rule during FY 2001. FMCSA management should use this time to consider all of the comments received and revise the proposed rule as appropriate.

In the final rule published in April 2003, however, the proposal for mandatory use of EOBRs was withdrawn (68 FR 22456, at 22488–22489, Apr. 28, 2003). We concluded that insufficient economic and safety data, coupled with a lack of support from the transportation community at large, did not justify an EOBR requirement at that time. We based these conclusions on the following:

(1) Neither the costs nor the benefits of EOBR systems were adequately ascertainable, and the benefits were easier to assume than to accurately estimate.

(2) The EOBR proposal was drafted as a performance standard, but enforcement officials generally preferred the concept of a design standard in order to facilitate data accessibility.

(3) There was considerable opposition to the proposal to phase in the EOBR requirement, starting with large long-haul motor carriers—those having more than 50 power units. Large carriers argued that this was irrational because small carriers generally have higher crash rates. Major operators also complained that the phase-in schedule would force them to pay high initial prices for EOBRs, while carriers allowed to defer the requirement would benefit from lower costs associated with increased demand, competition, and economies of scale.

(4) There was considerable concern about the potential use of EOBR data for purposes other than hours-of-service compliance.

The final rule on drivers' hours of service did contain assurances that research related to EOBRs and other technologies would continue. This ongoing research would include evaluation of ways to encourage or provide incentives for their use. Key research factors would include:

(1) Ability to identify the individual driver;

(2) Tamper resistance;

(3) Ability to produce records for audit;

(4) Ability of roadside enforcement personnel to access the hours-of-service information quickly and easily;

(5) Level of protection afforded other personal, operational, or proprietary information;

(6) Cost; and

(7) Driver acceptability.

FMCSA requests comments on these research factors. In your view, are we considering the appropriate criteria for our research into EOBRs?

Since publishing the final rule, we have concluded that we need additional, up-to-date information relating to the costs and benefits of using EOBRs. As a safety agency, we have a responsibility to evaluate the potential costs and benefits associated with requiring the use of these devices, even if we ultimately decide that voluntary use or incentives are better alternatives. In today's notice, we are requesting comments on the costs and benefits of a requirement to use EOBRs, including the relative costs and benefits of an industrywide requirement versus a more limited mandate on certain industry sectors, such as long-haul carriers. We are specifically interested in factors such as hardware acquisition (including modules for CMVs, equipment for communications between the CMV and the home terminal, vehicle-location-reference systems, and use of satellite transponder channels); training of drivers and back-office personnel; equipment installation, maintenance, repair, and replacement;

and preservation of both electronic records and backup paper RODS, if necessary. In addition, we are interested in information relating to potential reductions in personnel costs derived from reduced checking and storage of RODS. Although we recognize that precise estimates might not be possible from motor carriers that have not adopted EOBR or related technologies, we would like to know their best estimates based on conversations they may have had with potential equipment or service vendors.

With reference to hours-of-service violations, we are especially interested in hearing from motor carriers using EOBRs (or AOBRDs) instead of paper RODS. Any information such carriers could supply concerning their violation and out-of-service rates would be valuable for purposes of comparison with those rates at carriers not using EOBRs or AOBRDs.

As important, we are requesting comments on the need to revise the general EOBR performance requirements, as provided in § 395.15. In addition, we request information and comments concerning potential revisions to § 395.15 for the purpose of developing a comprehensive, performance-based specification for EOBRs that would ensure maintenance of data integrity throughout all recording, transmission, storage, retrieval, and display processes. Our objective is to assess recording methods to improve hours-of-service compliance and oversight through the use of automated—including electronic—duty status records. This complements FMCSA's ongoing research into the potential of various technologies to assure that drivers are fit and alert behind the wheel.

Potential Contents of an EOBR Specification

This advance notice of proposed rulemaking begins a process leading to clearer points of reference for EOBR system developers and users. We recognize the need to consider the ways that motor carriers' use of EOBRs could affect how they maintain documents on their operations. We also will consider how our compliance-assurance procedures, and those used by State and local enforcement officials, would need to change.

Clarification of Terminology

Today's notice requests comments on potential new definitions for a performance-based specification for on-board recording devices. As noted previously, since most if not all of the current generation of on-board recorders collect, store, and display data electronically, we will call those devices EOBRs. However, many recording devices developed before the introduction of electronically controlled engines in the early 1990s may collect some data via mechanical sensors, transform the mechanical signal to an electrical one, and transmit the signal electronically.

For the purpose of this rulemaking, we will use the generic term ''EOBR.'' This would encompass any new devices as well as the AOBRDs that comply with the current definition at § 395.2 and operational requirements at § 395.15. However, we use the term ''AOBRD'' by itself to refer to the earlier-generation devices designed to comply with the current requirements.

Core Issues

Electronic systems, although relatively costly to design and maintain compared with paper-based systems, have the capacity to eliminate a substantial amount of time-consuming manual data entry and review. We recognize the many challenges in gathering and recording data that is both accurate and sufficient in scope and detail to determine motor carriers' and CMV drivers' compliance with the hours-of-service regulations. One such challenge is verification of non-driving duty status information.

As noted previously, this rulemaking is but one element of FMCSA's multipronged research effort concerning EOBRs. For example, § 395.15 should establish specific guidelines for ensuring accuracy, integrity, and security of data in the recording and storage of driving time information. Development of such guidelines could potentially entail: (1) A requirement for a means to identify system defaults impacting the accuracy and completeness of driving time records; (2) ready methods to pinpoint tampering (either during the recording process or after the fact) associated with capture and recording of driving time; and (3) a requirement for a means to ensure reliable identification of the particular driver whose driving time is being captured and recorded, including distinguishing between team drivers.

Another core issue concerns the requirement in the current regulation for a device that is integrally synchronized with specific operations of the CMV in which it is installed. The intent is that the device provide ''ground truth'' for on-duty-driving. The on-board recorder must identify who drove the CMV and for how long. It must facilitate accurate entry of other duty status categories. Further, it must be designed to prevent duty status *activity and time* entries from being modified after the fact, while allowing drivers to enter explanatory information in the Remarks section.

FMCSA recently conducted a study published as *On-Board Recorders: Literature and Technology Review* (Report No. FMCSA–RT–02–040, July 2002). Through interviews with technology vendors and engine manufacturers, we learned that a number of products on the market provide some or all of the functions required under § 395.15. Nevertheless, few vendors actively market these features or have developed products *specifically* to provide the hours-of-service recordkeeping function. The study attributed this fact both to lack of market demand and to vendors' uncertainty regarding the Federal requirements. Interviews conducted with FMCSA staff as part of the study revealed concerns about:

- Technology limitations—particularly regarding the ability of a single system to capture all data perceived as important;
- The need to clearly define current performance requirements, and whether the requirements are well understood by the motor carrier industry; and
- The extent to which the enforcement community is prepared to rely on on-board devices for determining hours-of-service compliance.

A second study, *Hours of Service (HOS) Research and Analysis Modules* (January 2003), addressed in greater detail the potential for developing performance specifications for EOBRs. The five research modules cover data record structure and data security, engine control module and transmission control module use, georeferenced data, paper backup systems, and high-level architectures.

To increase our understanding of how on-board recorders might be more efficiently designed and used, FMCSA *requests comments* on the issues discussed below. We also will appreciate *your responses to the questions* included on some of the issues. Issue sections are designated A through O, and questions within sections are numbered. Please reference these letter and number keys in your responses.

A. Synchronization of Recorder to a Vehicle Operation Parameter

As noted previously, ensuring safe driving of commercial motor vehicles is at the heart of the hours-of-service regulations. An EOBR must be able to capture the data necessary to establish when a driver's duty status is ''on duty,

driving.'' The earliest AOBRDs captured this data using sensors—such as the speedometer or odometer circuit, or the tail shaft (output or drive shaft from an engine)—that reflected changes in vehicle motion. This data was combined with data from an internal clock to derive driving time. Advances in engine electronics allowed the data to be collected directly from the engine, presenting an opportunity to use the J1708 databus [3] to transmit it to an EOBR. One manufacturer, Delphi Corporation, asked FMCSA if this method complied with the Federal Motor Carrier Safety Regulations. In a December 2003 letter to Delphi Corporation, we affirmed that it would.

Some systems that track vehicle location using GPS technologies collect and record vehicle-position data only, inferring duty status based on software algorithms. As discussed earlier under *GPS Technologies: Notice of Interpretation and Request for Participation,* FMCSA became aware of at least one system that, in certain limited instances, did not provide accurate driving status information because of a combination of long polling intervals and preset system defaults. Thus, even though location data may be transmitted and recorded accurately, a motor carrier's or system operator's assumptions concerning changes in vehicle location between polling intervals, or data collection cycles (instances when vehicle location information is captured, along with the date and time), could result in incorrect duty status recordings. This would be particularly true if a driver failed to make entries in his or her on-board system to indicate that driving had begun. For example, a CMV moving slowly in a traffic stream through a construction zone might be traveling at less than a presumed driving speed, so that the duty status might be recorded as ''on-duty, not driving.'' Although drivers would presumably have an opportunity to correct their entries, they might not do so consistently.

We request comments concerning the need for synchronization and possible alternatives to the current regulatory language.

B. Amendment of Records

As noted earlier, the current regulatory guidance for § 395.15 (available on FMCSA's Web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/fmcsrguide.htm*) covers three issues: maintenance of a second electronic copy of files, amendment of a completed record by the driver, and use of algorithms to identify the location of the driver's change in duty status. The agency's current guidance on the second issue is as follows:

Question 2: May a driver who uses an automatic on-board recording device amend his/her record of duty status during a trip?

Guidance: No. Section 395.15(i)(3) requires [that] automatic on-board recording devices, to the maximum extent possible, be tamperproof and preclude the alteration of information collected concerning a driver's hours of service. If drivers who use automatic on-board recording devices were allowed to amend their record of duty status while in transit, legitimate amendments could not be distinguished from falsifications. Records of duty status maintained and generated by an automatic on-board recording device may only be amended by a supervisory motor carrier official to accurately reflect the driver's activity. Such supervisory motor carrier official must include an explanation of the mistake in the remarks section of either the original or amended record of duty status. The motor carrier must retain both the original and amended record of duty status.

We are reevaluating this guidance in the light of current EOBR capabilities. The guidance reflects two assumptions: that amendments would likely be made to change information already entered; and that the time the revision is made (and the times and duty status being revised) would be erased from the EOBR's memory. The second assumption does not account for the EOBR's ability (an ability probably shared by many AOBRDs) to maintain an *internal* audit log.[4] If the EOBR can accurately record the date and time of an entry, it could be programmed to prompt the driver to enter duty status or comments at any time the vehicle is stopped, the driver leaves the vehicle (if the vehicle has a door sensor), or the ignition is turned on or off. The EOBR also could prompt the driver to enter the time the work shift began and whether it included off-duty periods. We believe question 2 of the regulatory guidance may need to be revised to allow the driver to amend the duty status record, provided the system maintains both the original and amended records.

From a software perspective, this might be achieved through use of parallel data streams. One data stream would record the operation of the CMV using data and information contained in and extracted from other systems and devices on the vehicle. Examples include engine use information derived from engine control module (ECM) time and throttle position data; vehicle speed data, derived from throttle position and engine-on data; data on miles driven, from the odometer reading and time; and date and time data, from either the ECM clock or the internal clock on the recording unit. A second, overlying data stream would include the four categories of driver's duty status, along with remarks and other information used in the duty status reporting.

FMCSA requests comments on this issue. We would particularly appreciate responses to the following questions:

(1) Should FMCSA revise its definition of ''amend'' in the regulatory guidance for § 395.15 to include or exclude certain specific activities? For example, should a driver be able to annotate the Remarks section to provide details of an activity being performed while he or she is in an on-duty-not-driving status? Should a driver be able to revise a record to change the amount of on-duty driving time recorded over a very short period (for example, while dropping a trailer at the home terminal)? Should a driver be able to revise a record to change the amount of driving time if he or she exits a vehicle while it is stopped in traffic upstream of a crash?

(2) Should drivers be allowed to amend the duty status record if the system maintains both the original and amended records?

(3) Should the agency maintain the blanket prohibition against drivers' amending a RODS generated by an AOBRD?

C. Duty Status Categories When the CMV Is Not Moving

A significant number of hours-of-service violations are related to the on-duty-not-driving status, which onboard recorders are not designed to capture automatically (that is, without a driver's input). We understand that at least one commercial system defaults to an on-duty-not-driving status when the CMV is stopped. The previously mentioned Werner system also was modified to default the driver's duty status to ''on-duty not driving'' when the vehicle is stationary and the driver has not made an entry.

We request comments on this issue, and would particularly appreciate responses to the following question:

If a driver is away from a parked CMV but has not entered a change in duty status immediately upon stopping the vehicle, how might the driver correct the entry, other than by printing a hard copy of the day's RODS and making a handwritten entry?

[3] SAE standard, *Serial Data Communications Between Microprocessor Systems in Heavy-Duty Vehicle Applications.* Copyright 1993, Society of Automotive Engineers, Inc.

[4] The hardware-based data download requirement of 49 CFR § 395.15(b)(3) supports that assessment. See the discussion of this requirement later in this document.

D. Ensuring That Drivers Are Properly Identified

Establishing and enforcing appropriate use and documentation requirements could improve linkage of operational data to the specific driver's activities. A fundamental requirement would be to ensure that duty status data accurately identifies the driver. Many information technology applications use personal identification numbers and/or smart cards. In some situations where the need for identification and verification is critical for security reasons, some types of biometric identifiers are being used and others are being explored. FMCSA requests comments on this issue.

E. Reporting and Presentation (Display) Formats

A standardized reporting format is important for ensuring a clear and unambiguous duty status record. This helps establish the sequence and timing of events and facilitates verification of regulatory compliance. Although State roadside enforcement officials conducting vehicle and driver inspections generally review only a single driver's (or a pair of team drivers') records at a time, these safety personnel work under time constraints and often-stressful conditions. We have received numerous reports of State enforcement officials who purposely avoid reviewing EOBR and electronic records because they are unfamiliar with their appearance and unsure they can review them accurately and efficiently.

Reviews of driver records by motor carrier safety officials responsible for assuring fleet compliance, as well as those conducted by enforcement officials at a carrier's business office, differ from those conducted by roadside inspectors. During onsite reviews, safety or enforcement officials consider both individual and collective driving records in order to determine whether patterns of noncompliance may exist.

The intent of § 395.15 is to require that an electronically produced record of duty status contain the same information as a handwritten record. The 13 items required by regulation for AOBRD-generated duty status records (§ 395.15(c) and (d)) are identical to those required for manually produced RODS (§ 395.8 (b), (c), and (d)), with two exceptions. Section 395.15 does not include a requirement for a driver's certification and signature, nor does it explicitly provide for a Remarks section. The driver's signature is unnecessary because, under § 395.15(h)(3), submission of the record certifies that all entries made are true and correct. A Remarks section is not mandatory because there is no practical means for the driver to enter miscellaneous comments or information into an on-board recorder.

FMCSA is interested in developing a performance-oriented reporting standard that would serve officials conducting roadside inspections and compliance reviews. Since motor carriers and the traveling public would benefit from the prevention of regulatory violations, this reporting standard should help motor carriers facilitate their own internal review activities. *Your comments on the following two issues* would assist us in developing such a standard:

(1) *Visual record*—Although § 395.15(i)(5) does not specify details of how information is displayed on the screen of an AOBRD, § 395.15(b)(3) requires information support systems—separate from the on-board device—to comply with the requirements of § 395.8(d), including the use of a graph grid. We request comments on potential performance-oriented specifications for the display on the EOBR as well as for support systems that would provide a clear visual record while affording greater flexibility to those who design and use EOBRs. Comments from the law enforcement community would be especially helpful.

(2) *Data interchange standards*—Section 395.15(b)(3) states that EOBR support systems should meet the information interchange requirements of ''American National Standard Code for Information Interchange EIARS–232/CCITT V.24 port.'' This refers to the RS–232 serial communications standard [5] that was state-of-the-practice in the 1980s. Although some devices continue to use this interface, it has been supplanted in many applications. Furthermore, as a hardware communications standard, it does not address data formatting or content. We request suggestions concerning current and emerging data interchange standards for hardwired and wireless communications that would ensure the integrity of both data content and data formats. Your comments on other issues related to recording, reporting, and presentation (display) formats also would be helpful.

[5] RS–232C is a long-established standard (''C'' is the current version) that describes the physical interface and protocol for relatively low speed serial data communication between computers and related devices. It was defined by an industry trade group, the Electronic Industries Association (EIA), originally for teletypewriter devices. (Source: *http://searchnetworking.techtarget.com*)

F. Audit Trail

In connection with the necessity for tamper resistance in an EOBR, we are carefully considering the process of recording and identifying information in the form of an audit trail or event log. An important design feature would be user-friendly interface(s) to support not only motor carriers' internal reviews, but also reviews by FMCSA safety officials and roadside inspections by our State partners under the Motor Carrier Safety Assistance Program. The information from an EOBR—including audit trail data—may need to be made available at a motor carrier's place of business on demand (as during a compliance review).

An audit trail must reflect the driver's activities while on duty and tie them to the specific CMV(s) the driver operated. Its design must balance privacy considerations with the need for a verifiable record. The audit trail should automatically record a number of events, including (1) Any authorized or unauthorized modifications to the duty status records, such as duty status category, dates, times, or locations, and (2) any ''down'' period ''for example, one caused by the onset of device malfunction. In addition, the system should provide a gateway for electronic or satellite polling of CMVs in operation, or for reviewing electronic records already downloaded into a central system. This capability would permit reviewers to obtain a detailed set of records to verify time and location data for a particular CMV.

The presentation should include audit trail markers to alert safety officials, and personnel in the motor carrier's safety department, to records that have been modified. The markers would be analogous to margin notes and use highlighted code.

FMCSA requests comments on this issue.

G. Ability To Interface With Third-Party Software for Compliance Verification

It has been suggested that EOBR systems should be capable of interfacing with third-party auditing software packages, such as those used to verify point-to-point roadway distances. Others have suggested that hours-of-service compliance be verified instead through direct access to driver and motor carrier routing and scheduling data. Those favoring the latter method believe it could be most useful in the context of a compliance review, where safety officials must request the motor carrier's direct assistance and cooperation to access the carrier's systems. A special set of interfaces,

including views of specific information relevant to compliance, might be needed to enable safety officials to review the information they require.

We request responses to the following questions, as well as comments on other concerns related to the use of third-party software for compliance verification:

(1) What experience have motor carriers and roadside enforcement officials had using third-party software for compliance verification?

(2) What experience have motor carriers had using third-party software for purposes of scheduling, hours-of-service compliance review, and auditing?

(3) What experience have motor carriers had assisting FMCSA with extensive reviews of records of duty status that are maintained only in electronic form? Would third-party software have helped or hindered the process?

H. Verification of Proper Operation

Some electronic devices and systems on vehicles (such as antilock brake systems on cars and trucks) perform a power-on self-test. It might be possible to develop such a preprogrammed in-service test protocol for EOBRs that could be performed by safety officials at roadside. A test of this type might provide a limited amount of ''go/no-go'' information ''such as whether the communications line between the vehicle and the recorder is intact, whether the clock has been reset, and the status of other specific system elements.

FMCSA requests responses to the following questions, as well as comments on other issues related to verification of proper operation:

(1) What experience have roadside enforcement officials had using third-party software for compliance verification?

(2) How would a driver, a supervisor reviewing records, or a safety official verify that a recorder and the systems to which it is linked are operating properly?

(3) How would a roadside safety official or FMCSA compliance official perform that verification?

(4) Should a device be able to produce the results of its original and/or most recent acceptance or certification tests?

(5) Could a device be configured to produce an ''electronic audit'' on demand?

(6) How would audits be performed on disabled or inoperable units?

(7) How long should a driver be allowed to operate a CMV while the EOBR is not functioning, provided the driver is maintaining paper RODS?

(8) How would downtime, repair, and recalibration be documented?

(9) Should a unit be marked with its calibration data/record? If so, how should the unit be marked?

I. Testing and Certification Procedures

We are considering whether there is a need for the agency to establish detailed functional specifications for EOBRs, rather than continuing to rely upon the current generic performance standards under § 395.15(i). In addition, we are considering whether the current process of manufacturers' self-certification should be continued. The functional specifications would include standard performance criteria and compliance test procedures. If manufacturers (or independent third parties) were to perform tests according to FMCSA's compliance testing procedures, the agency could then offer to certify certain devices ''or possibly designs for devices ''as complying with the functional specifications. Parties performing the certification would need to obtain a device (or a sufficiently advanced prototype) to test.

This raises two issues: the propriety of FMCSA's rejecting a device, and the circumstances under which enforcement action should be taken.

If, during initial testing, the device were found not to meet the requirements of a published functional specification, FMCSA could unquestionably reject it. If, on the other hand, FMCSA certified an EOBR (and/or software) to which the manufacturer later made design changes, and the manufacturer's modifications diverged from one or more of the agency's functional specifications, the EOBR and/or software would no longer comply with our requirements. In such a case, immediate enforcement action against motor carriers found to be using the modified EOBR (or software) might not be appropriate. FMCSA might instead publish a **Federal Register** notice describing the noncompliance situation, and giving motor carriers an opportunity to check and recalibrate the affected EOBRs (or to otherwise ensure the devices operate within specified parameters). Any motor carriers that failed to comply with the terms of the **Federal Register** notice could then be subject to enforcement action, whether by FMCSA alone or in concert with other Federal agencies. One possible approach might be a public interest exclusion (PIE) similar to that used in 49 CFR part 40, subpart R. The purpose of a PIE is to protect the public interest from serious noncompliance with the requirements.

The European Union (EU) Type Specification for Electronic Tachographs, European Union Directive 2135/98,[6] provides an extensive and complex design specification for the hardware, software, and data storage and auditing functions of an electronic on-board recorder. While some characteristics of the design specification, particularly the basic recording and data storage requirements, may lend themselves to adaptation, the software design and recording media requirements were developed to respond to the EU's desire for an integrated system for on-vehicle recorders and recordkeeping systems and, as such, are highly prescriptive and complex. In addition, although the type specification for these devices was finalized in 1998, the date for mandatory installation of the electronic tachographs in new commercial vehicles, originally set for August 2002, has repeatedly been revised. It currently is set for August 2005.

Furthermore, the EU enforcement community expressed a number of concerns about perceived differences, incompatibilities, and inconsistencies between the current manual-tachograph regulation and the proposed electronic-tachograph regulation. There have also been concerns about the published requirements for data downloading and the utility of the devices for roadside enforcement. See D. M. Freund, Working Paper, *On-board automated recording for commercial motor vehicle drivers' hours-of-service compliance: the European experience*, August 2001.

We request responses to the following questions concerning testing and certification procedures. We also welcome any other comments relevant to this issue.

(1) Who could perform certification tests? Should they be done by FMCSA, by another Federal agency, or by an independent third party according to procedures and documentation requirements set forth in regulation?

(2) Should FMCSA continue to allow manufacturers of these devices to self-certify them? Why, or why not?

(3) Should FMCSA develop a list of approved devices, similar to the Conforming Products List maintained by

[6] Council Regulation (EC) No. 2135/98 of 24 September 1998 amending Regulation (EEC) No. 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the application of Regulations (EEC) No. 3820/84 and (EEC) No. 3821/85. This regulation is available on the Internet at *http://europa.eu.int/eur-lex/en/lif/reg/en_register_07204020.html*, where it is identified by the number 31998R2135.

the National Highway Traffic Safety Administration?[7]

(4) As noted above, FMCSA is aware of the European Union's detailed design specification that is part of Regulation 2135/98 for electronic tachographs. At this time, we believe the extraordinarily detailed database specification in the Appendix to Regulation 2135/98 would be too complex and costly, both for motor carriers and their EOBR suppliers to implement and for FMCSA to review. What are your views on this matter?

J. EOBR Maintenance and Repair

The current regulation (§ 395.15(i)(4)) requires the AOBRD to provide the driver with an audible and/or visible warning when it ceases to function. However, the types or degree of malfunction (such as loss of power source, loss of linkage to sensors, loss of ability to record, loss of ability to display) are not specified. While the requirement at § 395.15(i)(7) for the on-board recording device/system to *identify ''sensor failures and edited data when reproduced in printed form''* [emphasis added] does address the question of data integrity, it nevertheless omits any requirement that such data be identified in an electronic record (*i.e.*, one that is not printed).

We request responses to the following questions related to EOBR maintenance and repair:

(1) Is it feasible to design the EOBR to record the malfunction event (including its nature, date, and time) automatically ''that is, within the EOBR's memory?

(2) Are there circumstances that could prevent automatic capturing of this information? Please describe them. In such cases, should the driver record the malfunction event on a paper RODS?

(3) Section 395.15(i)(8) of the current regulations addresses maintenance and calibration of AOBRDs. It states that these devices ''must be maintained and recalibrated in accordance with the manufacturer's specifications.'' Is this requirement sufficient? Should the agency consider requiring that repair and recalibration be performed only by an approved source? Who should certify repair stations, and how could this be done?

(4) The current regulations do not address EOBR maintenance records. Motor carriers' CMV maintenance records must document installation, malfunction, failure, repair, and recalibration. Since the initial manufacturer places an identification and certification plate on the device, should installation, repair, and recalibration activities be documented by the approved source (*see* question 3), the motor carrier, or both? Should entities authorized to perform repair and maintenance be required to comply with FMCSA requests for access to their facilities and to documents concerning their work performed for motor carrier clients?

(5) Although the current regulations do not address how long a CMV equipped with an EOBR could continue to be operated after the device failed, they do require drivers to reconstruct the RODS for the current day and the past 7 days (less any days for which drivers have records), and to continue to prepare a handwritten record of all subsequent duty status until the device is again operational (§ 395.15(f)). Should FMCSA require repair or replacement of an EOBR within a specific number of days?

(6) *Manufacturers and suppliers*: What types of periodic maintenance and calibration do AOBRDs and EOBRs require? How often do they require such maintenance, and what is the typical direct cost?

(7) *Manufacturers and suppliers:* What is the typical lifespan of an AOBRD? What is the typical lifespan of an EOBR? Is there any salvage value to either device?

K. Development of ''Basic'' EOBRs To Promote Increased Carrier Acceptance

Motor carriers and drivers expend a significant amount of time, effort, and money to complete, file, review, and store paper RODS. According to the most recent FMCSA estimate, it takes 6.5 minutes for a CMV driver to complete a RODS and an additional 3 minutes for a motor carrier to review it. Because more than 4.2 million CMV drivers must complete and file their RODS, drivers spend more than 110 million hours each year completing these records. Motor carriers must devote another 51 million hours annually to reviewing and storing the records. The agency estimates the cost of completing, filing, reviewing, and maintaining these records at $63.3 million annually.

Many commercially available on-board recorders and support systems offer drivers and motor carriers the opportunity to better plan their schedules and routes, monitor the performance of their vehicles, and use this information to improve safety and operational productivity.

However, many of these advanced systems may come with a high price tag, perhaps too high for most small motor carriers and independent drivers. For this reason, we are interested in exploring the development of a performance-based specification for a minimally compliant EOBR. A minimally compliant device would provide the electronic-data equivalent of an accurate RODS yet be more affordable for small motor carriers and independent drivers.

We request comments on the concept of such a performance specification.

L. Definitions—Basic Requirements

FMCSA requests comments on the following possible definitions of terms, including proposed basic requirements:

(1) *AOBRD* means an automatic on-board recording device as defined in 49 CFR 395.2.

(2) *EOBR* means an electronic on-board recorder used to record a CMV driver's hours of service in order to provide documentation to determine compliance with 49 CFR Part 395. An EOBR has features providing additional functions beyond those of an AOBRD. It must provide a means to record and store the date and time of each data entry, the status of the engine (on/off), and the location of the CMV. The EOBR also must calculate and display the distance traveled and the road speed. Definitions of these data elements follow.

(3) *Date and time:* The date and time must be obtained via a signal that cannot be altered by a motor carrier or driver. The signal may be obtained from a source that is internal or external to the CMV.

(4) *Engine on/off:* The signal indicating whether the engine is on or off must be taken from the ECM on those engines so equipped. On vehicles not equipped with an ECM (*i.e.*, those manufactured before the late 1980s), the signal must be taken from the tail shaft. The engine status must be monitored and recorded at intervals of 1 second or less, as well as when an engine on/off event occurs.

(5) *Location:* The physical location of a CMV. At a minimum, the location must be recorded at each change of duty status. The location description for the duty status change must be sufficiently precise to enable enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas. The location data must be entered by the driver or via signal(s) received from an independent source external to the vehicle. FMCSA seeks comment on how frequently such an external signal determines the vehicle location entry, and whether specific events such as ignition shutoff should automatically trigger a signal.

[7] The National Highway Traffic Safety Administration maintains its Conforming Products List under the designation NTI–131. *See* 69 FR 42237 (July 14, 2004) for the most recent amendment.

(6) *Distance traveled:* Miles traveled that day for each driver operating the CMV. The EOBR must derive the distance traveled from a source internal to the vehicle (for example, tail shaft data recorded on the ECM).

(7) *Road speed:* Must be derived using distance-traveled data from a source internal to the CMV (usually the ECM). The data must be monitored and recorded at intervals of 1 second or less. An AOBRD or EOBR is deemed to be integrally synchronized when it receives and records the engine and date/time information from a source or sources internal to the CMV.

M. Potential Benefits and Costs

Benefits. In general, motor carriers could be expected to derive both safety compliance and operational productivity benefits from EOBRs. Fundamentally, the use of EOBRs could improve hours-of-service compliance, potentially increasing highway safety. This could be accomplished in several ways. First, because these devices document driving hours more accurately and precisely than can paper RODS, they could help deter excessive hours behind the wheel. Second, EOBR data can be made more readily available to motor carriers to improve their efficiency of assigning drivers to particular runs, and to ensure those drivers' compliance throughout the trip. Third, the presence of EOBRs would serve as a tangible reminder to both motor carriers and drivers that compliance with the hours-of-service regulations is taken seriously. Last, increased use of the devices could set a positive example for the industry, and counteract the proclivity of some carriers to compete on the basis of noncompliance with the hours-of-service regulations.

Another potential benefit of EOBR use would be to improve motor carriers' operational productivity. Use of these devices, especially in conjunction with appropriate automated review and monitoring software, could provide for more accurate documentation of vehicle and driver operations in a form that is amenable to automated review. FMCSA estimates that these automatic on-board recording devices reduce substantially, by as much as 90 percent, the time involved in preparing, filing and storing paper. Additionally, on-board recording devices could be integrated with other operations or logistics management systems. They also may be installed as an accessory to some vehicle productivity and safety monitoring systems, as well as take advantage of interfaces with real-time communications systems.

Costs. On the other hand, there may be a number of concerns and potential limitations regarding the adaptability of state-of-the-art EOBRs to hours-of-service compliance assurance. Currently available devices cannot discriminate among the myriad activities that constitute on-duty-not-driving, nor can they differentiate on-duty-not-driving and off-duty activities.

Further, many motor carriers have expressed substantial concerns about costs and benefits of current on-board recorders. EOBRs can be costly both to purchase and to operate. Estimates of installed costs per unit range from $500, for hardware supplied to an original equipment manufacturer for installation in a new vehicle, to $3,000 for installation of a retrofit unit in an in-service CMV. The cost, particularly at the lower end of the scale, does not include back-office systems for data tracking, verification, and information management, or training for drivers and others.

In the 1990s, FHWA engaged the University of Michigan Transportation Research Institute to study the applicability of on-board recorders to motor carrier operations. Motor carrier fleet response rates for this study were very low, possibly because of early adverse industry commentary on the study. The study, completed in late 1998, found that: (1) Large fleets were far likelier to use on-board recorders, and (2) mandatory on-board recorder use was overwhelmingly viewed as requiring extremely high expenditures for minimal operational benefits. Significantly, FMCSA data indicate that 90 percent of motor carriers operate fewer than nine trucks or buses.

The degree of benefit provided by an EOBR depends upon whether and how it is used. Motor carriers will not benefit merely from installing an EOBR; they must use and act upon the EOBR data. If a motor carrier has not made the fundamental commitment to operate safely and fails to review and act upon the EOBR data, the potential safety influence of the device will be limited.

FMCSA requests responses to the following questions concerning benefits and costs:

(1) What have been the safety, operational, and compliance benefits experienced by motor carriers with actual use of AOBRDs or EOBRs?

(2) What have been the driver hours-of-service violation rates, out-of-service rates, and crash experience of motor carriers using AOBRDs or EOBRs?

(3) What cost savings have motor carriers using AOBRDs or EOBRs experienced as a result of paperwork reduction, reduced time in reviewing RODs, and other efficiencies?

(4) In general, how is training on EOBR use presented to drivers, dispatchers, and other motor carrier employees? How many hours of training are typically required for drivers? Please estimate the direct costs of this training. How many hours of training are typically required for dispatchers and other back-office staff? Please estimate the direct costs of this training.

(5) What would be the typical cost of a typical EOBR that is minimally compliant with the current regulations? Would there be differences in the cost for a device installed at the time of the vehicle's manufacture and the cost of an aftermarket product? Please describe.

(6) What do manufacturers of on-board computer and communications systems typically charge motor carriers to incorporate in their systems EOBR capabilities satisfying the requirements of § 395.15? Please also include estimates of the costs of back-office systems.

N. Incentives To Promote EOBR Use

FMCSA believes EOBRs have the potential to improve motor carriers' compliance with the hours-of-service regulations, and to provide for more efficient, effective, and economical documentation and review of drivers' records of duty status. FMCSA requests comments on what other incentives could help to promote the use of EOBRs.

O. Miscellaneous Questions

We also request responses to the following questions:

(1) Should FMCSA propose requiring that motor carriers in general, or only certain types of motor carrier operations, use EOBRs?

(2) How reliable are current-generation EOBRs?

(3) What is the minimum information FMCSA should require an automatic or electronic on-board recorder to capture automatically, without any input from the driver or external sources?

(4) What information should drivers be required to enter into the on-board recorder, and how could that information be verified?

(5) For EOBRs that receive location information or raw latitude and longitude information via electronic signals from GPS technologies or a similar system, what minimum level of accuracy should FMCSA require with regard to the likely distance between the indicated and actual location of the CMV?

(6) What types of technology should be used to verify, to the greatest extent practicable, the identity of the person

who is operating the vehicle when the EOBR is recording the time as driving time?

(7) Should FMCSA require that if a memory storage device such as a smart card is used, the on-board system also must store information about the driver's identity and provide information concerning the times the storage device was entered and removed, what information was accessed, and by whom?

(8) Should the use of a particular file transfer protocol (XML or other) be considered for data capture? Should any such requirement specify use of an open-source protocol?

(9) What regulatory changes could FMCSA initiate to encourage greater usage of EOBRs in the trucking and motorcoach industries? For example, should we reduce our record retention requirement for motor carriers that use EOBRs?

(10) *Manufacturers and suppliers:* Approximately how many AOBRDs and EOBRs are currently in use? Describe the general characteristics of motor carriers (size, commodities transported, and geographical scope of operations) that use devices with limited functionality and of those using devices with comprehensive functionality.

(11) *Manufacturers and suppliers:* What types of data would it be inappropriate for an EOBR to record? That is, should any data be off-limits?

(12) *Manufacturers and suppliers:* When AOBRDs and EOBRs are manufactured or repaired, are solvents or other substances used that could have environmental or driver health consequences if they are not disposed of properly? Do the devices contain components or materials (including hazardous materials) that could generate adverse environmental or driver health consequences if not disposed of properly?

(13) How are EOBRs typically disposed of?

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory

Policies and Procedures

FMCSA believes that this rulemaking is a significant regulatory action within the meaning of E.O. 12866, and is significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5, May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in issues related to motor carrier compliance with the Federal hours-of-service regulations. The Office of Management and Budget has reviewed this advance notice of proposed rulemaking under E.O. 12866. We would appreciate responses from the public to our questions on the potential costs and benefits of this rulemaking. This will help us better determine the level of significance of any subsequent rule regarding EOBR performance specifications and use.

Regulatory Flexibility Act

To meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA will evaluate the effects of this rulemaking action on small entities and make a preliminary determination that a regulation arising from this proceeding would have a significant economic impact on a substantial number of small entities.

Although this document does not make any specific proposal, we believe it could lead to a proposed rule with a significant potential impact on small motor carriers. FMCSA requests small entities to comment on the questions asked in this advance notice (specifically, questions related to the costs and benefits of compliance) so that we may accurately determine the economic impacts any proposal would have on small entities. *In addition, we request small entities to comment on other issues that are of particular concern to them, such as the timeframe for implementation.* This will help us to minimize any such impacts.

Executive Order 13132 (Federalism)

FMCSA has analyzed this ANPRM in accordance with the principles and criteria in Executive Order 13132 (Federalism). We have determined that this ANPRM does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation. Should FMCSA decide to issue a notice of proposed rulemaking dealing with electronic on-board recorders, the agency would evaluate any federalism implications of the proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Office of Management and Budget (OMB) regulations, at 5 CFR part 1320, Controlling Paperwork Burdens on the Public (1995), FMCSA is required to estimate the burden that new regulations would impose in the course of generating, maintaining, retaining, disclosing, or providing information to or for the agency. We believe that rulemaking action in response to information submitted to the docket could effect changes that would substantially reduce the collection of information requirements that are currently approved.

On March 4, 2002, OMB approved the agency's request to renew or revise the information collection (IC) for the Driver's Record of Duty Status. This approval includes the driver's record of duty status under 49 CFR 395.8 and the time card alternative under 49 CFR 395.1(e). OMB assigned control number 2126–0001 to this information collection. FMCSA estimated the annual burden of this information collection to be 161,364,492 hours, at a cost to the public of $63.7 million.

In anticipation of a regulatory action making certain motor carriers of passengers subject to the requirements of part 395 (among other regulations), FMCSA submitted a request to OMB to revise this information collection. OMB approved this revision on December 20, 2002, with an expiration date of December 31, 2005. The revised estimated annual time burden was 162,200,492 hours, and the revised annual cost was estimated at $64 million. OMB approved FMCSA's most recent request to revise this information collection on April 29, 2003, and it will expire on April 30, 2006. The latest revised estimated annual time burden is 160,376,492 hours, with an estimated annual cost of $63.3 million. This revision was due to the agency's implementation of a final rule, entitled ''Hours of Service of Drivers: Driver Rest and Sleep for Safe Operations,'' that resulted in an estimated 48,000 fewer drivers being subject to the drivers' requirements covered by this information collection. In addition, the title of this IC has been changed from *Driver's Record of Duty Status* to *Hours-of-Service of Drivers Regulations.* This change was proposed in the NPRM, and no comments regarding the name change were received.

If this advance notice of proposed rulemaking leads to a rule that increases motor carriers' use of EOBRs, the annual time burden should decrease because the time required to create each record is considerably lower for electronic records than for paper records.

Background of Past OMB Approvals

OMB Control Number: 2126–0001.

Title: [Old]: Driver's Record of Duty Status (RODS). [New]: Hours-of-Service of Drivers Regulations.

As indicated earlier in the ''Legal Basis'' section, both the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984 allow the Secretary of Transportation (Secretary) to promulgate regulations that establish maximum hours of service of drivers employed by motor carriers. The Secretary has adopted regulations that require information to be recorded in a specified manner. FMCSA regulations allow motor carriers to make electronic records produced through the use of automatic on-board recording devices, in lieu of keeping paper records. *FMCSA estimates that these automatic on-board recording devices reduce substantially, by as much as 90 percent, the time involved in preparing, filing and storing paper.* FMCSA believes that the use of automatic on-board recorders continues to be uncommon and is unlikely to grow significantly under the current regulations.

The RODS must be maintained with all supporting documents for a period of 6 months from the date of the record. FMCSA believes the recordkeeping requirements are necessary for motor carriers and drivers to properly monitor compliance with the hours-of-service regulations. They also are necessary for Federal, State and local officials who are charged with monitoring and enforcing hours-of-service regulations. The hours-of-service regulations were promulgated to promote the safe operation of CMVs, and we believe this recordkeeping requirement is not duplicative of information that would otherwise be reasonably accessible to FMCSA.

FMCSA estimates there are 6,410,430 commercial motor vehicle drivers who are subject to the hours-of-service regulations. However, not all of these drivers are necessarily subject to the RODS paperwork requirement. For instance, FMCSA estimates that 25 percent of Local Delivery drivers are eligible to use the 100-air-mile-radius exception in § 395.1(e) in lieu of preparing paper RODS as required under § 395.8. This group of drivers is unlikely to use EOBRs since their recordkeeping requirements can be met with time cards. Therefore, we assume here that the remaining 75 percent of Local Delivery drivers who are subject to the hours-of-service regulations would be potential users of automated on-board recorders. Below is a breakdown of the total number of CMV drivers subject to the hours-of-service regulations and, for the purposes of this ANPRM, the estimated percentage of drivers within each category who would be potential users of automated on-board recorders:

Long-Haul Drivers: 366,304 (100 percent are assumed to be potential EOBR users).

Regional Drivers: 834,363 (100 percent are assumed to be potential EOBR users).

Local Delivery Drivers: 3,997,023 (75 percent, or 2,997,767, are assumed to be potential EOBR users).

Local, Services Drivers: 1,190,740 (zero percent are assumed to be potential EOBR users).

Long-Haul Commercial Van Drivers: 22,000 (100 percent are assumed to be potential EOBR users).

Multiplying the above estimates of drivers in each group by the estimated percentages constituting potential EOBR users yields a total of 4,220,434 CMV drivers. This is FMCSA's estimate of the number of CMV drivers subject to the RODS paperwork requirement and, for the purposes of this ANPRM, the number we assume would be potential EOBR users. (More information on the above driver estimates is available at 67 FR 1396 (Jan. 10, 2002) under Docket number FMCSA–2001–9688.) FMCSA welcomes comments and alternative estimates regarding the number of applicable CMV drivers discussed above.

Recordkeepers/Respondents: Approximately 4,220,434 CMV drivers.

Average Burden per Response: 6.5 minutes for drivers to prepare the daily record of duty status; 3 minutes for motor carriers to review and file records of duty status and all supporting documents.

Estimated Total Annual Burden: The estimated total annual burden is 160,376,492 hours.

Collection of Information Frequency: RODS: Every day of the year. Two or more days off duty may be kept on one record. Supporting documents: Collection must occur during every workday.

Estimated Annual Hour Burden for the Information Collection: Interested parties are invited to send comments regarding any aspect of these information collection requirements, including but not limited to (1) Whether the collection of information is necessary for the performance of FMCSA functions, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

If you submit comments to the Office of Management and Budget concerning the information collection requirements of this document, your comments will be most useful if received at OMB by November 30, 2004. You must mail, hand deliver, or fax your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503; fax: (202) 395–6566.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321 *et seq.*, as amended) requires Federal agencies to consider the consequences of, and prepare a detailed statement on, all major Federal actions significantly affecting the quality of the human environment. Accordingly, FMCSA has prepared a Preliminary Environmental Assessment (PEA) for this advance notice of proposed rulemaking. The PEA is available in the docket. We invite all interested parties to submit public comments on this PEA.

List of Subjects in 49 CFR Part 395

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 27, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04–19907 Filed 8–27–04; 1:30 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[I.D. 082504A]

RIN 0648–AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Voluntary Three-pie Cooperative Program; Allocation of Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Notice of availability of amendments to a fishery management plan; request for comments.

SUMMARY: The U.S. Congress amended the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Voluntary Three-Pie Cooperative Program (Program). The Program is necessary to allocate specified Bering Sea/Aleutian Islands (BSAI) crab resources among harvesters, processors, and coastal communities. This Program will be implemented by Amendment 18 to the Fishery Management Plan for BSAI King and Tanner Crabs (FMP). Additionally, the North Pacific Fishery Management Council (Council) has submitted Amendment 19 to the FMP for Secretarial review, which represents minor changes necessary to implement the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendments must be submitted on or before November 1, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- FAX to 907–586–7557;
- E-mail to *KTC18–NOA–0648–AS47@noaa.gov*. Include in the subject line of the e-mail the following document identifier: 18 19 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendments 18 and 19 and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm*.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. No. 108–199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve, by January 1, 2005, the Voluntary Three-Pie Cooperative Program (Program), as it was approved by the Council between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. The Program allocates BSAI crab resources among harvesters, processors, and coastal community interests. The Program, as it will be implemented by Amendments 18 and 19 to the FMP, is described below.

Voluntary Three-Pie Cooperative Program - Amendment 18

The Council developed the Program over a 6–year period to fit the specific dynamics and needs of the BSAI crab fisheries. The Program is a limited access system that balances the interests of several groups that depend on these fisheries. The Program will address conservation and management issues associated with the current derby fishery and will reduce bycatch and associated discard mortality. The Program is also designed to improve the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in fishery cooperatives, are intended to increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests are protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

The Program encompasses the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*) - West of 174° W., Eastern Aleutian Islands (Dutch Harbor) golden king crab - East of 174° W., Western Aleutian Islands (Adak) red king crab - West of 179° W., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. bairdi*). In this document, the phrase ''crab fisheries'' refers to these fisheries, unless otherwise specified.

Harvest Sector

Qualified harvesters would be allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a valid, permanent, fully transferable license limitation program (LLP) license endorsed for that crab fishery. Quota share represents an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. The annual allocations of TACs, in pounds, are referred to as individual fishing quotas (IFQs). Using LLP licenses for defining eligibility in the Program would maintain current fishery participation. A harvester's allocation of QS for a fishery would be based on the landings made by his or her vessel in that fishery. Specifically, each allocation is the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share would be designated as either catcher vessel (CV) shares or catcher/processor (C/P) shares, depending on whether the vessel processed the qualifying harvests on board. In addition, catcher vessel QS would be designated by landing region. Catcher vessel IFQ would be issued in two classes. Crabs harvested with class A IFQ would require delivery to a processor holding unused processing quota. Class A IFQ harvests also would be subject to a regional delivery requirement. Under this regional requirement, harvests would be delivered either in a North or in a South region (in most fisheries). Crabs harvested with class B IFQ could be delivered to any processor (except C/Ps operating as C/Ps) and would not be regionally designated. Harvests in excess of IFQ would be forfeited in all cases. Class B IFQs are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of quota share and IFQ , either by sale or lease, would be allowed, subject to limits including caps on the amount of shares a person may hold or use. Leasing would mean the use of IFQs on a vessel in which the holder of the underlying QS holds less

than a 10 percent ownership interest or on which the underlying QS holder is not present. To be eligible to receive transferred QS or IFQ, a person would be required to be a U.S. citizen with at least 150 days of sea time in any U.S. commercial fishery. A corporate entity would be eligible to receive transferred QS or IFQ only if it were at least 20 percent owned by a U.S. citizen with at least 150 days of sea time in any U.S. commercial fishery. Initial recipients of QS, CDQ groups, and community entities would be exempt from these transfer eligibility criteria.

Separate caps would be imposed to limit the amount of QS and IFQs a person could hold and to limit the use of IFQs onboard a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps are chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings are established for CDQ groups, which represent rural western Alaska communities. Processor holdings of harvest shares would also be limited by caps on vertical integration. Quota share holders could retain and use initial allocations of QS above the caps.

Captains Shares (C Shares)

To protect their interests in the fisheries, qualifying captains would be allocated 3 percent of the qualifying catch history as C shares. These shares are intended to provide long term benefits to captains and crew. The allocation to captains would be based on the same qualifying years and computational method used for quota share allocations to LLP holders. To ensure that C shares benefit at-sea participants in the fisheries, the IFQ derived from C shares could be used only when the C share holder is on board the vessel.

To be eligible to receive an allocation, an individual would be required to have historic and recent participation. Historic participation would be demonstrated by at least one landing in each of three of the qualifying years. Recent participation would be demonstrated by at least one landing in two of the three most recent seasons before June 10, 2002, except for the fisheries that were closed in this period. For these fisheries (Adak red king crab, the Pribilof Islands red and blue king crab, the St. Matthew Island blue king crab, and the Tanner crab fisheries), recent participation would be demonstrated by at least one landing in two of the three most recent seasons preceding June 10, 2002, in the snow crab, Bristol Bay red king crab, or one of the Aleutian Islands golden king crab fisheries. The recent participation requirement would be waived for captains who died in fishing-related incidents if the captain's estate applies for QS.

C shares would be required to be delivered to shore-based or floating processors for processing. During the first 3 years a fishery is open after implementation, C shares would not be subject to specific delivery requirements. After 3 years, C shares would be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations.

To be eligible to receive transferred C shares, a person would be required to be a U.S. citizen with at least 150 days sea time in a U.S. commercial fishery in a harvest capacity. In addition, the person would be required to be an ''active participant'' in the BSAI crab fisheries, demonstrated by a landing in a crab fishery during the 365 days before the transfer application. Evidence of participation could be either a State of Alaska fish ticket, an affidavit from the vessel owner, or other verifiable evidence.

Leasing of C shares in each fishery would be permitted in the first three seasons a fishery is prosecuted after implementation of the Program. After the first three seasons the fishery is prosecuted, leasing would be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10–year period.

Individual C share use and holdings would be capped at the same level as the vessel use caps applicable to QS. Initial allocations of C shares in excess of the cap could be retained. C shares would not be considered in determining a vessel's compliance with the vessel use caps on QS. Landings with C shares would be subject to the IFQ fee program.

C/P captains would be allocated C/P C shares that include a harvesting and on-board processing privilege. Harvests with C/P C shares also could be delivered to shore-based or floating processors.

Processing Sector

A processing privilege, analogous to the harvesting privilege allocated to harvesters, would be allocated to processors. Qualified processors would be allocated processor quota share (PQS) in each crab fishery. PQS represent an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. An annual allocation of PQS is referred to as IPQ and expressed in pounds of crab. IPQs would be issued for 90 percent of the allocated harvests, corresponding to the 90–percent allocation of Class A IFQ. Processor privileges would not apply to the remaining 10 percent of the TAC allocated as Class B IFQ. IPQs would be regionally designated for processing in a North or a South region (corresponding to the regional designation of the Class A IFQ).

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's allocation in a fishery would equal its share of all qualified pounds of crab processed in the qualifying period (i.e., pounds processed by the processor divided by pounds processed by all qualified processors). Processor shares would be transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs could be used without transfer at any facility or plant operated by a processor. New processors could enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups.

Processors would be limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit could be retained and used. In addition, in the snow crab fishery, no processor would be permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

Catcher/Processors

C/Ps have a unique position in the Program because they participate in both the harvest and processing sectors. Persons who caught and processed crab on the same vessel would be allocated C/P QS. These shares would represent a harvest privilege and an on-board processing privilege. To be eligible for C/P shares, a person would be required to hold a permanent fully transferable C/P LLP license. In addition, a person must have processed crab on board the C/P in either 1998 or 1999. Persons meeting these qualification requirements would be allocated C/P QS in accordance with the allocation rules for harvest shares for all qualified catch that was processed on board. Catcher/Processor QS would not have regional designations.

Regionalization

The regional designation of QS is intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations would be created in most fisheries. The North region would be all areas in the Bering Sea north of 56°20′ N latitude. The South region would be all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ would be regionally designated. Crab harvested with regionally designated IFQ would be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated shares would be required to accept delivery of and process crab in the designated region. Catcher vessel QS and PQS would be designated based on the location of the activity that gave rise to the allocation. For example, qualified catch delivered in a region would result in CV QS designated for that region.

The Program has two exceptions to the North/South regional designations. In the western Aleutian Islands (Adak) golden king crab fishery, 50 percent of the CV QS and PQS would be designated as western shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ allocation would have no regional designation and would not be subject to a regional delivery requirement. This designation would be applied to all allocations regardless of the historic location of landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which would have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

Cooperatives

Harvesters may form voluntary cooperatives associated with one or more processors holding PQS. A minimum membership of four unique CV QS holders would be required for cooperative formation. The cooperative would receive the sum of the annual IFQ allocations of its members in the applicable crab fisheries. A cooperative would be required to submit annually a cooperative agreement to NMFS before NMFS would set aside the cooperative's IFQ allocation for its exclusive use. Cooperative members would be allowed to leave a cooperative at any time after one season. Departing members would retain their QS, but a departing member's IFQ would remain with the cooperative for the duration of the cooperative's IFQ permit. Vessels on which cooperative shares were fished would not be subject to use caps. IFQ could also be transferred between cooperatives, subject to NMFS' approval.

Only processors that hold IPQ could associate with a cooperative. Processors that associate with cooperatives would not be members of the cooperatives but would remain independent. A cooperative would not be bound to deliver its harvests to an associated processor, provided that the cooperative complies with the delivery requirements associated with the harvest and processing shares. Processors that do not hold IPQ would not be able to associate with a cooperative.

Binding Arbitration

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, at times delaying fishing to pressure price concessions from processors. Participants in both sectors are interested in ending that practice, but are concerned that market power could be altered by the rationalization of the fisheries. The Program would create a system with a one-to-one relationship of harvest and processing shares that would limit the pool of persons with whom a QS holder may transact. The concern is most acute for the last QS holders from each sector to commit their shares because of the one-to-one relationship of IPQ to Class A IFQ. The last Class A IFQ holder to contract deliveries will have a single IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Program includes a provision for binding arbitration to resolve price disputes between harvesters and processors.

The system of binding arbitration would apply to IPQ, Class A IFQ, and C shares when those shares are subject to IPQ landing requirements. Under the system, the arbitrator would establish a finding that preserves the historic division of revenues while considering other relevant factors, including current ex-vessel prices, location and timing of deliveries, and vessel safety.

The arbitration process would begin pre-season with a market report for each fishery prepared by an independent market analyst and the establishment of a non-binding fleet wide benchmark price by an arbitrator who has consulted with both fleet representatives and processors. Information provided by the sectors would be historical in nature. In determining this benchmark price, the arbitrator would consider the highest arbitrated price that applied to at least 7 percent of the IPQ in the fishery in the preceding year. This non-binding price is intended to help guide price negotiations and inform later arbitration proceedings. After a negotiating period, a Class A IFQ holder could initiate a single arbitration proceeding with one or more IPQ holders before the fishing season. Proceedings may be initiated by one or more IFQ holders prior to the season after committing to deliver crab to the IPQ holder. For a brief period of time prior to the commencement of hearings, an IFQ holder could join the proceeding by unilaterally committing deliveries to the IPQ holder.

The arbitration would be in a last best (or final) offer format. The IPQ holder would submit a single offer. Each IFQ holder could submit an offer, or a cooperative could submit a collective offer. For each IFQ holder or cooperative, the arbitrator would select between the IFQ holder's (or cooperative's) offer and the IPQ holder's offer. An IFQ holder with uncommited IFQ may opt-in to any contract that results from a competitive arbitration by accepting all terms of the arbitration decision (assuming that the IPQ holder held adequate shares to accept the deliveries).

Community Protection Measures

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities would be defined as boroughs, if an organized borough exists, or as first or second class cities, if no organized borough exists. Communities eligible for the community protection measures would be those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has preliminarily determined that the eligible crab communities are as follows: Adak, Akutan, Dutch Harbor, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moeller.

''Cooling off'' provision. During the first two years of fishing under the Program, any PQS based on processing history from an eligible community could not be transferred from that community.

''Cooling off'' provision exemptions. Three exemptions exist to the cooling off provision. Tanner crab PQS would be exempt from the ''cooling off'' provision because that fishery is

expected to be a concurrent fishery with the Bristol Bay red king crab and snow crab fisheries. Western Aleutian Islands red king crab PQS would also be exempt from the ''cooling off'' provision because that fishery was closed for several years leading up to development of the Program. Western Aleutian Islands golden king crab PQS would also be exempt from the ''cooling off'' provision because the West regionalization landing requirements are inconsistent with the historic distribution of landings that would be established by the ''cooling off'' provision.

Individual processing quota caps. IPQ caps would be established to limit the annual issuance of IPQs in seasons when the TAC exceeds a threshold amount. When the Bristol Bay red king crab TAC is greater than 20 million pounds, IPQs would not be issued for the amount of the TAC in excess of 20 million pounds. When the snow crab TAC is greater than 175 million pounds, IPQs would not be issued for the amount of the TAC in excess of 175 million pounds. Under these circumstances, Class A IFQ issued in excess of these thresholds would not be subject to the IPQ landing requirements but would be subject to the regional landing requirements.

Sea time waiver. Sea time eligibility requirements for the purchase of QS would be waived for CDQ groups and community entities in eligible communities, allowing those communities to build and maintain local interests in harvesting. CDQ groups and community entities would be eligible to purchase PQS. CDQ groups and community entities would not be permitted to purchase C shares.

Right of first refusal for processor quota share. Eligible communities would have a right of first refusal on the transfer of PQS and IPQ originating from processing history in the community if the transfer would result in relocation of the shares outside the community. Adak would not be eligible for the right of first refusal provision because Adak would receive a direct allocation of western Aleutian Islands golden king crab. The right of first refusal would be granted to CDQ groups in CDQ communities. In addition, eligible communities in the Gulf of Alaska (GOA) north of 56°20′ would have a right of first refusal on the transfer of PQS and IPQ from communities in the GOA with less than 3 percent of the qualified landings in any crab fishery included in the Program.

Community Development Quota Program and Community Allocations

Community development quota program. The CDQ program would be broadened to include the eastern Aleutian Islands golden king crab fishery and the western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program would be increased from 7.5 to 10 percent of the TAC. The increase would not apply in the Norton Sound crab fisheries, which are excluded from the Program. CDQ groups would be required to deliver at least 25 percent of their allocation to shore based processors. The CDQ allocations would be managed independently from the Program and would not be subject to the Program's share designations and landing requirements.

Community purchase. Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community.

Adak allocation. An allocation of 10 percent of the TAC of western Aleutian Islands golden king crab fishery would be made to the community of Adak. The allocation to Adak would be made to a nonprofit entity representing the community, with a board of directors elected by the community. Oversight of the use of the allocation for ''fisheries related purposes'' would be deferred to the State of Alaska under the FMP. NMFS would have no direct role in oversight of the use of this allocation. The State of Alaska would provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. This allocation would not be part of the crab IFQ fisheries, but would be managed as a separate commercial fishery by the State of Alaska in a manner similar to management of the crab CDQ fisheries.

Crew Loan Program

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) would be created. This program would be funded by 25 percent of the cost recovery fees required by section 304 of the Magnuson-Stevens Act. Loan money would be accessible only to active participants and could be used to purchase either C shares or QS. Quota share purchased with loan money would be subject to all use and leasing restrictions applicable to C shares for the term of the loan.

Protections for Participants in Other Fisheries

The Program would affect the fishing patterns of current participants and could allow BSAI crab fishermen to increase participation in other fisheries. To protect participants in GOA groundfish fisheries, restrictions would apply to vessels that participate in the snow crab fishery. The restrictions, also called sideboards, would restrict a vessel's harvests to its historic harvests in all GOA groundfish fisheries (except the sablefish fishery). Vessels with less than 100,000 pounds of total snow crab harvests and more than 500 metric tons (mt) of total Pacific cod harvests in the GOA during the qualifying years would be exempt from the restrictions. In addition, vessels with less than 50 mt of total groundfish landings in the GOA during the qualifying period would be prohibited from harvesting Pacific cod from the GOA. Restrictions would be applied to vessels but also would restrict harvests made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel.

Additional Program Elements

Annual reports and Program review. NMFS, in conjunction with the State of Alaska, would produce annual reports on the Program. Eighteen months after implementation of the Program, the Council would review the processor quota share and binding arbitration components. After 3 years, the Council would conduct a preliminary review of the Program. A full review of the Program would be undertaken at the first Council meeting in the fifth year after implementation. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act standards. These reviews would examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts. Additional reviews would be conducted every 5 years.

Data collection. The Program includes a comprehensive socio-economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. Cost, revenue, ownership, and employment data would be collected regularly from

the harvesting and processing sectors. The data would be used to study the economic and social impacts of the Program on harvesters, processors, and communities. Participation in the data collection program would be mandatory for all participants in the fisheries.

Monitoring and enforcement. NMFS and the State of Alaska would coordinate monitoring and enforcement of this Program. Harvesting and processing activity would need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans for cooperatives would generate data to provide accurate and reliable estimates of the total catch and landings to manage quota share accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements. Monitoring would include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Cost Recovery. NMFS would establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee would be paid in equal shares by the harvesting and processing sectors and would be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also would enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. However, the collection of up to 133 percent of the actual costs of management and enforcement under the Program would be authorized, which would provide for up to 100 percent of management costs after allocation of 25 percent of the cost recovery fees to the loan program.

Amendment 19

The amended Magnuson-Stevens Act provides the Council the authority to recommend to the Secretary subsequent amendments to the Program and provides the Secretary with the discretion to approve these amendments by January 1, 2005. In June 2004, the Council reviewed the public comments received on the Draft EIS and determined that changes to the Program were warranted. The Council recommended changes to three components of the Program: binding arbitration, cooperative sideboard management, and program review. These changes are contained in Amendment 19 to the FMP.

The first change would limit information sharing among participants involved in binding arbitration to minimize the exposure of these participants to antitrust liability. The second change would remove a provision that directs cooperatives to limit their aggregate Pacific cod catch in both federal and state waters because this provision is not practical or enforceable. Thus, groundfish sideboards in the GOA would be managed by NMFS through fleet-wide sideboard directed fishing closures for federal waters and the parallel fishery in state waters.

The Council also directed its staff to prepare an analysis of captain share (C share) landings for consideration by the Council 18 months after fishing begins under the Program. The purpose of the analysis is to examine landings patterns of C shares to determine whether the distribution of landings among processors and communities of C shares differs from the distribution of landings of the general harvest share pool. After receiving the analysis, the Council will consider whether to remove the 90/10 Class A/Class B split from C shares, which is scheduled to take effect 3 years after fishing under the Program begins.

An EIS was prepared for Amendments 18 and 19 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives (see ADDRESSES). The EIS contains as appendices the Regulatory Impact Review/Initial Regulatory Flexibility Analysis and the Social Impact Assessment prepared for this action.

Public comments are being solicited on proposed Amendments 18 and 19 through the end of the comment period stated (see DATES). All comments received by the end of the comment period on the amendments will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period. NMFS will publish the proposed regulations to implement Amendments 18 and 19 in October 2004.

Dated: August 26, 2004.

Allen D. Risenhoover,

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

[FR Doc. 04–19971 Filed 8–31–04; 8:45 am]

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Notices

Federal Register

Vol. 69, No. 169

Wednesday, September 1, 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

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Wednesday, September 15, 2004, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or e-mail *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

Dated: August 26, 2004.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 04–20008 Filed 8–31–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

[04–01–S]

Grain Inspection, Packers and Stockyards Administration

Designation for the Amarillo (TX), Cairo (IL), Louisiana, North Carolina, Belmond (IA), and Wisconsin Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Amarillo Grain Exchange, Inc. (Amarillo); Cairo Grain Inspection Agency, Inc. (Cairo); Enid Grain Inspection Company, Inc. (Enid); Louisiana Department of Agriculture and Forestry (Louisiana); North Carolina Department of Agriculture (North Carolina); D. R. Schaal Agency, Inc. (Schaal); and Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

DATES: Effective date: October 1, 2004.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720-8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 2004 **Federal Register** (69 FR 9573), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by April 1, 2004.

There were two applicants for the Amarillo area. Amarillo applied for designation to provide official services in the area currently assigned to them, except for Beckham, Ellis, Harper, and Roger Mills Counties in Oklahoma. Enid Grain Inspection Company, Inc. (Enid), a currently designated official agency, applied for designation in the part of Amarillo's area that Amarillo did not apply for, Beckham, Ellis, Harper, and Roger Mills Counties in Oklahoma.

There were two applicants for the Louisiana area. Louisiana applied for designation to provide official services in the entire area currently assigned to them. BSI Inspectorate Services, Inc. (BSI), an unofficial inspection company, applied for designation to provide official services in the entire area currently assigned to Louisiana.

GIPSA asked for comments on the applicants for providing service in the Amarillo and Louisiana areas in the June 1, 2004, **Federal Register** (69 FR 30868). Comments were due by July 1, 2004. There were no comments on the Amarillo area. For the Louisiana area, we received two positive comments supporting Louisiana, one from a Louisiana Manager and one from a customer.

Cairo, North Carolina, Schaal, and Wisconsin were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined the following. Amarillo, Cairo, North Carolina, Schaal, and Wisconsin are able to provide official services in the geographic areas specified in the March 1, 2004, **Federal Register**, for which they applied. Enid is able to provide official services in the geographic areas specified in the March 1, 2004, **Federal Register**, for which they applied, in addition to the area they already serve. Louisiana is better able to provide services in the Louisiana area for which they applied.

These designation actions to provide official inspection services are effective October 1, 2004, and terminate September 30, 2007 for Amarillo, Cairo, Louisiana, North Carolina, and Schaal. For Enid, the designation term runs concurrently with their present designation, in the geographic area specified above, in addition to any areas they are already designated to serve, and terminates March 31, 2007. Wisconsin is designated for one year only, terminating September 30, 2005, to allow GIPSA time to evaluate Wisconsin's programs. Interested

persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start–end
Amarillo	Amarillo, TX, 806–372–8511 Additional location: Guymon, OK	10/01/2004–9/30/2007
Cairo	Cairo, IL, 618–734–0689	10/01/2004–9/30/2007
Enid	Enid, OK, 580–233–1121 Additional location: Catoosa, OK	4/01/2004–3/31/2007
Louisiana	Baton Rouge, LA, 337–948–0230 Additional locations: Jonesville, Oak Grove, Opelousas, Pineville, LA	10/01/2004–9/30/2007
North Carolina	Raleigh, NC, 919–733–4491 Additional location: Fayetteville, NC	10/01/2004–9/30/2007
Schaal	Belmond, IA, 641–444–3122	10/01/2004–9/30/2007
Wisconsin	Madison, WI, 608–224–4922 Additional locations: Milwaukee, Superior, WI	10/01/2004–9/30/2005

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–19932 Filed 8–31–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

[04–03–A]

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Owensboro (KY), Bloomington (IL), Iowa Falls (IA), Minnesota, Fargo (ND), Grand Forks (ND), and Plainview (TX) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in March 2005. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: J. W. Barton Grain Inspection Service, Inc. (Barton); Central Illinois Grain Inspection, Inc. (Central Illinois); Central Iowa Grain Inspection Service, Inc. (Central Iowa); Minnesota Department of Agriculture (Minnesota); North Dakota Grain Inspection Service, Inc. (North Dakota); Northern Plains Grain Inspection Service, Inc. (Northern Plains); and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATES: Applications and comments must be postmarked or electronically dated on or before October 1, 2004.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov.*
- Mail: Send hard copy to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Barton	Owensboro, KY	04/01/02	03/31/2005
Central Illinois	Bloomington, IL	04/01/02	03/31/2005
Central Iowa	Iowa Falls, IA	04/01/02	03/31/2005
Minnesota	Saint Paul, MN	10/01/03	03/31/2005
North Dakota	Fargo, ND	04/01/02	03/31/2005
Northern Plains	Grand Forks, ND	10/01/03	03/31/2005
Plainview	Plainview, TX	04/01/02	03/31/2005

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Tennessee is assigned to Barton. Clark, Crawford, Floyd, Harrison, Jackson, Jennings, Jefferson, Lawrence, Martin, Orange, Perry, Scott, Spencer, and Washington Counties, Indiana.

In Kentucky:

Bounded on the North by the northern Daviess, Hancock, Breckinridge, Meade, Hardin, Jefferson, Oldham, Trimble, and Carroll County lines;

Bounded on the East by the eastern Carroll, Henry, Franklin, Scott, Fayette, Jessamine, Woodford, Anderson, Nelson, Larue, Hart, Barren, and Allen County lines;

Bounded on the South by the southern Allen and Simpson County lines; and

Bounded on the West by the western Simpson and Warren County lines; the southern Butler and Muhlenberg County lines; the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

In Tennessee:

Bounded on the North by the northern Tennessee State line from Sumner County east;

Bounded on the East by the eastern Tennessee State line southwest;

Bounded on the South by the southern Tennessee State line west to the western Giles County line; and

Bounded on the West by the western Giles, Maury, and Williamson County lines North; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois is assigned to Central Illinois.

Bounded on the North by State Route 18 east to U.S. Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; the Livingston County line east to State Route 47;

Bounded on the East by State Route 47 south to State Route 116; State Route 116 west to Pontiac, which intersects with a straight line running north and south through Arrowsmith to the southern McLean County line;

Bounded on the South by the southern McLean County line; the eastern Logan County line south to State Route 10; State Route 10 west to the Logan County line; the western Logan County line; the southern Tazewell County line; and

Bounded on the West by the western Tazewell County line; the western Peoria County line north to Interstate 74; Interstate 74 southeast to State Route 116; State Route 116 north to State Route 26; State Route 26 north to State Route 18.

Central Illinois' assigned geographic area does not include the following grain elevator inside Central Illinois' area which has been and will continue to be serviced by the following official agency: Springfield Grain Inspection, Inc.: East Lincoln Farmers Grain Co., Lincoln, Logan County, Illinois.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Iowa is assigned to Central Iowa.

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines.

Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Agvantage F. S., Chapin, Franklin County; and Farmer's Coop Company, Rockwell, Cerro Gordo County (located inside D. R. Schaal Agency's area).

Central Iowa's assigned geographic area does not include the following grain elevators inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. A. V. Tischer and Son, Inc.: West Central Coop, Boxholm, Boone County; and

2. Omaha Grain Inspection Service, Inc.: Hancock Elevator, Elliot, Montgomery County; and Hancock Elevator (two elevators), Griswold, Cass County.

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Minnesota, except those export port locations within the State, is assigned to Minnesota.

e. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and North Dakota, is assigned to North Dakota.

In Illinois:

Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to the northern Calhoun County line;

Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

In North Dakota:

Bounded on the North by the northern Steele County line from State Route 32

east; the northern Steele and Traill County lines east to the North Dakota State line;

Bounded on the East by the eastern North Dakota State line;

Bounded on the South by the southern North Dakota State line west to State Route 1; and

Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

f. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Northern Plains.

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to the southern Grand Forks County line;

Bounded on the South by the southern Grand Forks and Nelson County lines west to the western Nelson County line; the western Nelson County line north to the southern Benson County line, the southern Benson and Pierce County lines west to State Route 3; and

Bounded on the West by State Route 3 north to the southern Rolette County line; the southern Rolette County line west to the western Rolette County line to the north to the North Dakota State line.

g. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Texas, is assigned to Plainview.

Bounded on the North by the northern Deaf Smith County line east to U.S. Route 385; U.S. Route 385 south to FM 1062; FM 1062 east to State Route 217; State Route 217 east to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River southeast to the Briscoe County line; the northern Briscoe County line; the northern Hall County line east to U.S. Route 287;

Bounded on the East by U.S. Route 287 southeast to the eastern Hall County line; the eastern Hall, Motley, Dickens, Kent, Scurry, and Mitchell County lines;

Bounded on the South by the southern Mitchell, Howard, Martin, and Andrews County lines; and

Bounded on the West by the western Andrews, Gaines, and Yoakum County lines; the northern Yoakum and Terry county lines; the western Lubbock County line; the western Hale County line north to FM 37; FM 37 west to U.S. Route 84; U.S. Route 84 northwest to FM 303; FM 303 north to U.S. Route 70; U.S. Route 70 west to the Lamb County line; the western and northern Lamb County lines; the western Castro County line; the southern Deaf Smith County line west to State Route 214; State Route 214 north to the northern Deaf Smith County line.

2. Opportunity for Designation

Interested persons, including Barton, Central Illinois, Central Iowa, Minnesota, North Dakota, Northern Plains and Plainview are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 2005 and ending March 31, 2008. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm.*

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Barton, Central Illinois, Central Iowa, Minnesota, North Dakota, Northern Plains and Plainview official agencies. In commenting on the quality of services, commenters are encouraged to submit pertinent data including information on the timeliness, cost, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–19933 Filed 8–31–04; 8:45 am]

BILLING CODE 3410–EN–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled a meeting of its Technical Programs Committee to take place in Washington, DC on Tuesday, September 14, 2004, as noted below.

DATES: The schedule of events is as follows:

Tuesday, September 14, 2004

3–5 p.m. Technical Programs Committee.

ADDRESSES: The meeting will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information regarding this meeting, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Technical Programs Committee meeting, the Access Board will consider the following agenda items: (a) Ongoing research and technical assistance projects; and (b) FY 2005 research program.

This meeting is accessible to persons with disabilities. If you plan to attend and require a sign language interpreter or similar accommodation, please make your request with the Board by September 7, 2004. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 04–19883 Filed 8–31–04; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–2004]

Foreign-Trade Zone 15—Kansas City, MO; Application for Subzone; Midwest Quality Gloves, Inc. (Distribution of Gloves, Raingear, Footwear, and Garden Accessories); Chillicothe and Hamilton, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting special-purpose subzone status for the warehousing and distribution facilities of Midwest Quality Gloves, Inc. (Midwest Quality Gloves), located in Chillicothe and Hamilton, Missouri. The application

was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 24, 2004.

The Midwest Quality Gloves facilities (140 employees) consist of three sites on 12 acres: *Site 1* (4 acres) is located at 835 Industrial Road, Chillicothe, Livingston County; *Site 2* (3 acres) is located at 600 Brunswick Road, Chillicothe, Livingston County; and *Site 3* (5.4 acres) is located at 101 North Frame Street, Hamilton, Caldwell County. The facilities are used for the storage, distribution, and kitting of imported gloves, raingear, footwear, and garden accessories.

Zone procedures would exempt Midwest Quality Gloves from Customs duty payments on products that are re-exported. Some 5 percent of the products are re-exported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Midwest Quality Gloves to utilize certain Customs procedures resulting in increased efficiencies for its logistics and distribution operations. The company is not requesting authority for processing activity and has indicated that components used in kitting operations will be admitted to the subzone in privileged foreign status. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is November 1, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 15, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 2345 Grand Boulevard, Suite 650, Kansas City, MO 64108.

Dated: August 24, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–19892 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of September 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings	
ARGENTINA: Certain Hot-Rolled Carbon Steel Flat Products, A–357–814	9/1/03–8/31/04
BELARUS: Steel Concrete Reinforcing Bars, A–822–804	9/1/03–8/31/04
CANADA: New Steel Rail, Except Light Rail, A–122–804	9/1/03–8/31/04
INDONESIA: Steel Concrete Reinforcing Bars, A–560–811	9/1/03–8/31/04
ITALY: Stainless Steel Wire Rod, A–475–820	9/1/03–8/31/04
JAPAN: Flat Panel Displays, A–588–817	9/1/03–8/31/04
JAPAN: Stainless Steel Wire Rod, A–588–843	9/1/03–8/31/04
LATVIA: Steel Concrete Reinforcing Bars, A–449–804	9/1/03–8/31/04
MOLDOVA: Steel Concrete Reinforcing Bars, A–841–804	9/1/03–8/31/04
POLAND: Steel Concrete Reinforcing Bars, A–455–803	9/1/03–8/31/04
REPUBLIC OF KOREA:.	
Stainless Steel Wire Rod, A–580–829	9/1/03–8/31/04
Steel Concrete Reinforcing Bars, A–580–844	9/1/03–8/31/04
SOUTH AFRICA: Certain Hot-Rolled Carbon Steel Flat Products, A–791–809	9/1/03–8/31/04
SPAIN: Stainless Steel Wire Rod, A–469–807	9/1/03–8/31/04
SWEDEN: Stainless Steel Wire Rod, A–401–806	9/1/03–8/31/04
TAIWAN: Stainless Steel Wire Rod, A–583–828	9/1/03–8/31/04
THE PEOPLE'S REPUBLIC OF CHINA:.	
Foundry Coke, A–570–862	9/1/03–8/31/04
Freshwater Crawfish Tail Meat, A–570–848	9/1/03–8/31/04
Greige Polyester/Cotton Printcloth, A–570–101	9/1/03–8/31/04
Steel Concrete Reinforcing Bars, A–570–860	9/1/03–8/31/04
UKRAINE:.	
Silicomanganese, A–823–805	9/1/03–8/31/04
Solid Agricultural Grade Ammonium Nitrate, A–823–810	9/1/03–8/31/04

	Period
Steel Concrete Reinforcing Bars, A–823–809	9/1/03–8/31/04
Countervailing Duty Proceedings	
ARGENTINA: Certain Hot-Rolled Carbon Steel Flat Products, C–357–815	1/1/03–12/31/03
CANADA: New Steel Rail, Except Light Rail, C–122–805	1/1/03–12/31/03
ITALY: Stainless Steel Wire Rod, C–475–821	1/1/03–9/15/03
Suspension Agreements	
None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at *http://www.ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building.

Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2004. If the Department does not receive, by the last day of September 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 24, 2004.

Holly A. Kuga,

Senior Office Director, Office for Import Administration.

[FR Doc. E4–2010 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders listed below. The International Trade Commission (''ITC'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review,* which covers the same antidumping and countervailing duty orders.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230; telephone (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping and countervailing duty orders:

DOC case no.	ITC case no.	Country	Product
A–427–098	A–25	France	Anhydrous Sodium Metasilicate.
C–408–046	C–47	EU	Sugar.
A–423–077	AA–198	Belgium	Sugar.
A–427–078	AA–199	France	Sugar.
A–428–082	AA–200	Germany	Sugar.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*i.e.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet web site at the following address: *http://ia.ita.doc.gov/sunset/.*

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset web site for any updates to the appropriate service list before filing any submissions. The Department will make additions to and/or deletions from the service lists provided on the sunset web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the relevant service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(b) and section 771 (9)(C), (D), (E), (F), and (G) of the Act) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate in accordance with 19 CFR 351.218(d)(1)(i). The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, with regard to each order identified above, if we do not receive an order-specific notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order or finding without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. *See* 19 CFR 351.218(d)(3)(i). The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the ITC's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: August 24, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–19938 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary antidumping duty determination of sales at less than fair value.

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Alex Villanueva, NME Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0159, or (202) 482–3208, respectively.

Scope of the Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through either freezing or

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

canning and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices, or sauce are included in the scope of the investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are included in the scope of the investigation.

Excluded from the scope are: (1) Breaded shrimp [2] and prawns (1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classifiable under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

[2] Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes battered shrimp. *See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp (''Dusted/Battered Scope Memo''),* dated July 2, 2004.

Background

On July 2, 2004, the Department of Commerce (the ''Department'') preliminarily determined that certain frozen and canned warmwater shrimp from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(a) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China (''Preliminary Determination''),* 69 FR 42654 (July 16, 2004).

On July 13, 2004, Allied Pacific Food (Dalian) Co. Ltd., Allied Pacific (H.K.) Co., Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. (collectively, ''Allied Pacific''), Yelin Enterprise Co. Hong Kong, Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Products Co., Ltd., Shantou Yelin Frozen Seafood Co. (collectively, ''Yelin'; both Yelin and Allied Pacific are collectively referred to as ''the Mandatory Respondents'') timely filed allegations that the Department made ministerial errors in its Preliminary Determination.

On July 13, 2004, Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd., (''Zhejiang Cereals''), ZJ CNF Sea Products Engineering Ltd., CNF Zhanjiang (Tong Lian) Fisheries Co., Ltd., Zhoushan Xifeng Aquatic Co., Ltd., Zhejiang Daishan Baofa Aquatic Product Co., Ltd., Zhejiang Taizhou Lingyang Aquatic Products co., Zhoushan Juntai Foods Co., Ltd., Zhoushan Zhenyang Developing Co., Ltd., Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd., Zhoushan Diciyuan Aquatic Products Co., Ltd., Zhejiang Zhenglong Foodstuffs Co., Ltd., Zhejiang Evernew Seafood Co., Ltd., Jinfu Trading Co., Ltd., Taizhou Zhonghuan Industrial Co., Ltd., Shanghai Linghai Fisheries Economic & Trading Co., Ltd., Asian Seafoods (Zhanjiang) Co., Ltd., (''Asian''), Shantou Sez Xuhao Fastness Freeze Aquatic Factory Co., Ltd., (''Shantou Sez Xu''), Shantou Yuexing Enterprise Company (''Shantou Yuexing''), Shantou Shengping Oceanstar Business Co., Ltd. (''Shantou Oceanstar'') and Hainan Golden Spring Foods Co., Ltd., (''Hainan Golden''), (collectively ''Section A Respondents''), timely filed allegations that the Department made ministerial errors in its Preliminary Determination.

On August 3, 2004, the Department requested that the Mandatory Respondents resubmit their ministerial error comments in accordance with 19 CFR 351.224(d). On August 9, 2004, the Mandatory Respondents filed revised ministerial error comments.

Significant Ministerial Error

A ministerial error is defined in section 351.224(f) of our regulations as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Section 351.224(e) of the Department's regulations provides that the Department ''will analyze any comments received and, if appropriate, correct any *significant* ministerial error by amending the preliminary determination * * *'' (emphasis added).

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g). The Department is publishing this amendment to its *Preliminary Determination* pursuant to 19 CFR 351.224(e).

Ministerial Error Allegations From the Mandatory Respondents

The Department addresses allegations of ministerial error with regard to the Mandatory Respondents in its *Memorandum to the File, dated August 20, 2004, from Paul Walker, Case Analyst through James C. Doyle, Program Manager, Regarding Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the PRC: Allegations of Ministerial Error from Mandatory Respondents (''Mandatory Respondent Memo'').* Specifically, these allegations concern the raw shrimp surrogate value and usage ratio, and Yelin's CEP profit and inland freight. For purposes of this amended preliminary determination we

are not changing any findings in the preliminary determination for any of the Mandatory Respondents. For a detailed analysis of the allegations made by Mandatory Respondents, please see the *Mandatory Respondent Memo.*

Ministerial Error Allegations From the Section A Respondents

The Department addresses allegations of ministerial error with regard to Section A Respondents in its *Memorandum to the File, dated August 18, 2004, from Julia Hancock and Irene Gorelik, Case Analysts through James C. Doyle, Program Manager, Regarding Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Allegations of Ministerial Error from Section A Respondents (''Section A Respondent Memo'').* Specifically, these allegations concern the expiration of business licenses, the acceptance of certificates of incorporation in lieu of a business license, sales packages, price negotiations and illegible submissions.

Additionally, on July 13, 2004, July 28, 2004, and August 4, 2004, the Department received additional timely information from certain Section A Respondents. The Department will address these comments in the final determination. *See Section A Respondent Memo.*

Amended Preliminary Determination

Upon re-examining the record for Shantou Shengping Oceanstar Business Co., Ltd. and Shantou Yuexing Enterprise Company, the Department agrees it made ministerial errors and is, therefore, correcting the error and granting these Section A companies separate rates for this amended preliminary determination. As a result of our correction of ministerial errors in the *Preliminary Determination,* the Department has determined that the following weighted-average dumping margins apply: [3]

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM THE PEOPLE'S REPUBLIC OF CHINA: SECTION A RESPONDENTS

Exporter and producer	Original preliminary margin (percent)	Amended preliminary margin (percent)
Shantou Shengping Oceanstar Business Co., Ltd.	112.81	49.09
Shantou Yuexing Enterprise Company	112.81	49.09

Because the errors alleged for the Mandatory Respondents were not significant, the Department is not amending the weighted-average dumping margin listed in the *Preliminary Determination*. In addition, the PRC-wide rate remains unchanged. The Mandatory Respondents will, however, have the opportunity to address the issues raised in their ministerial error comments in their case brief, which will be considered by the Department at the final determination.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: August 23, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–20028 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

[3] For the antidumping duty margin for all Section A Respondents not listed here, *see Preliminary Determination*, 69 FR 42654 (July 16, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary antidumping duty determination of sales at less than fair value.

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, NME Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

Scope of the Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through either freezing or canning and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the investigations. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are included in the scope of the investigation.

Excluded from the scope are (1) breaded shrimp [2] and prawns (1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classifiable under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and customs purposes only and are not dispositive, but rather the written descriptions of the scope of these investigations is dispositive.

Background

On July 2, 2004, the Department of Commerce (''the Department'') preliminarily determined that certain frozen and canned warmwater shrimp from the Socialist Republic of Vietnam are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(a) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam* (*''Preliminary Determination''*) 69 FR 42672 (July 16, 2004).

On July 12, 2004, Camau Frozen Seafood Processing Import Export Corporation (''Camimex''), Kim Anh Co., Ltd. (''Kim Anh''), Minh Phu Seafood Corporation (''Min Phu'') and Minh Hai Joint Stock Seafoods Processing Company (''Seaprodex Minh Hai''), hereinafter collectively referred to as ''the Mandatory Respondents,'' timely filed allegations that the Department made ministerial errors in the preliminary determination. In addition, by July 12, 2004, certain Section A Respondents timely filed allegations that the Department made ministerial errors in the preliminary determination.

On July 19, 2004, the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company, hereinafter referred to collectively as ''Petitioners,'' filed rebuttal comments to the Mandatory Respondents' ministerial error allegations. Petitioners' July 19, 2004 submission was rejected as ''the Secretary will not consider replies to comments submitted in connection with a preliminary determination.'' *See* 19 CFR 351.224(c)(3). *See Letter from James C. Doyle, Program Manager, AD/CVD Enforcement III to Petitioners Regarding Ministerial Error Allegation Rebuttal Comments*, dated August 16, 2004.

In reviewing the ministerial error allegations of the Mandatory Respondents, the Department noted that the allegations were deficient. On August 3, 2004, the Department sent a letter to the Mandatory Respondents requesting that they (1) present the appropriate correction and (2) demonstrate how the alleged ministerial error is significant by illustrating the effect on the individual weighted-average dumping margin as required by 19 CFR 351.224(c). On August 6, 2004, the Mandatory Respondents submitted their revised ministerial error allegations and noted that the correction of these alleged errors were not significant as required by 19 CFR 351.224(g).

Significant Ministerial Error

The Department's regulations provide that the Secretary will correct any *significant* ministerial error by amending the preliminary determination. *See* 19 CFR 351.224(e). A ministerial error is an error in addition, subtraction or other arithmetic functions. A clerical error results from inaccurate copying, duplication, or any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 CFR 351.224(f). A *significant* ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g). We are publishing this amendment to the Preliminary Determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the rate for one Section A Respondent, Kien Giang Seaproduct Import Export Company.

Ministerial Error Allegations From Mandatory Respondents

The Department addresses allegations of ministerial error with regard to the Mandatory Respondents in its *Memorandum to the File, dated August 20, 2004, from Nicole Bankhead, Case Analysts through James C. Doyle, Program Manager, Regarding Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Allegations of Ministerial Error from Mandatory Respondents* (*''Mandatory Respondent Memo''*). Specifically, these allegations concern the by-product offset; headless shell-on conversion ratios; cold-storage, brokerage & handling and containerization expenses; post-sale price adjustments; and CONNUM-by-CONNUM comparisons. For purposes of this amended preliminary determination we are not changing any findings in the preliminary determination for any of the Mandatory Respondents. For a detailed analysis of the allegations made by Mandatory Respondents, please see the *Mandatory Respondent Memo*.

[2] Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes battered shrimp as discussed below. *See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp* (*''Dusted/Battered Scope Memo''*), dated July 2, 2004.

Ministerial Error Allegations From the Section A Respondents

The Department addresses allegations of ministerial error with regard to Section A Respondents in its *Memorandum to the File, dated August 20, 2004, from Nicole Bankhead and Paul Walker, Case Analysts through James C. Doyle, Program Manager, Regarding Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Allegations of Ministerial Error from Section A Respondents.* Specifically, these allegations concern price negotiations, the acceptance of an investment licence in lieu of a business license and the dating of submissions.

Amended Preliminary Determination

For the purposes of this amended preliminary determination, we are changing our finding in the *Preliminary Determination* and granting a separate rate to one additional Section A Respondent, Kien Giang Seaproduct Import Export Co. (''Kisimex''), based on the Department's re-examination of evidence on the record. As a result of our correction of ministerial errors in the *Preliminary Determination,* we have determined that the following weighted-average dumping margin applies: [3]

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM THE SOCIALIST REPUBLIC OF VIETNAM: SECTION A RESPONDENTS

Exporter and producer	Original preliminary margin (percent)	Amended preliminary margin (percent)
Kien Giang Seaproduct Import Export Co.	93.13	16.01

Because the ministerial errors alleged for the Mandatory Respondents do not constitute *significant* ministerial errors under 351.224(g), we are not changing the weighted-average dumping margin listed in the *Preliminary Determination*. In addition, the Vietnamese-wide rate remains unchanged.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: August 23, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–20030 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

[3] For the antidumping duty margin for all Section A Respondents not listed here, *see Preliminary Determination*, 69 FR 42654 (July 16, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Initiation of Antidumping Duty New Shipper Review for the Period July 1, 2003, Through June 30, 2004

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review in Certain Pasta from Italy.

EFFECTIVE DATE: September 1, 2004.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper review of the antidumping duty (AD) order on certain pasta from Italy. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2003), we are initiating an AD new shipper review for Atar S.r.L. (Atar).

FOR FURTHER INFORMATION CONTACT: Dennis McClure or James Terpstra at (202) 482–5973 and (202) 482–3965, respectively; AD/CVD Operations 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2004, the Department received a timely request from Atar, in accordance with 19 CFR 351.214(b), for a new shipper review of the AD order on certain pasta from Italy, which has a July anniversary month.[1]

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Atar certified that it did not export subject merchandise to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which exported subject merchandise during the POI.[2] Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that and subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.[3]

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), and based on information on the record, we are initiating an AD new shipper review for Atar. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review. We intend to issue final results of this review no

[1] *See Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

[2] *See* submission from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP on behalf of Atar S.r.L. to the Department regarding Request for New Shipper Review, Case A-475-818, dated July 30, 2004.

[3] *Id.*

later than 90 days after the date on which the preliminary results are issued. *See* 19 CFR 351.214(i).

New shipper review proceeding	Period to be reviewed
Atar S.r.L.	07/01/03–06/30/04 (AD)

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the reviews, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above–listed company in accordance with 19 CFR 351.214(e). Because Atar certified that it both produces and exports the subject merchandise, the sale of which is the basis for these new shipper review requests, we will permit the bonding privilege only with respect to entries of subject merchandise for which Atar is both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214(d).

Dated: August 24, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–1983 Filed 8–31–04; 8:45 a.m.]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894, A–570–895]

Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Postponement of the Preliminary Determinations of the Antidumping Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is postponing the preliminary determinations in the antidumping investigations of certain tissue paper products and certain crepe paper products from the People's Republic of China (''PRC'') until no later than September 14, 2004. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: John Conniff or Alex Villanueva, at (202) 482–1009 or (202) 482–3208, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2004, the Department initiated antidumping investigations of imports of certain tissue paper products and certain crepe paper products from the PRC. *See Notice of Initiation of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China,* 69 FR 12128 (March 15, 2004) (''*Initiation Notice*''). Section 733(b) of the Act requires the Department to make a preliminary determination no later than 140 days after the date of initiation. On July 12, 2004, the Department extended the preliminary determinations of the certain tissue paper and certain crepe paper products from PRC investigations in accordance with Section 733(c)(1)(B) of the Act. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products from PRC* 69 FR 41785 (July 12, 2004). The preliminary determinations in the investigation of certain tissue paper and certain crepe paper products from PRC are now due not later than August 25, 2004.

Postponement of Preliminary Determinations

As discussed below, we have determined that these investigations are extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Act. Furthermore, we have determined that the parties concerned are cooperating, as required by section 733(c)(1)(B) of the Act, and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act.

In the investigation of certain tissue paper products, one of the respondents has submitted complex reporting methodologies for its factors of production (''FOPs''), which require detailed analysis by the Department. In addition, the Department may require additional information from the mandatory respondents for this preliminary determination. The Department can only complete its analysis and gather all of the necessary information by postponing the preliminary determination.

In the investigation of certain crepe paper products, the Department requires additional time to evaluate the section A responses and relevant information on the record so as to determine the appropriate margin for the section A respondents.

Therefore, it is the Department's decision to postpone the current preliminary determinations so that all of the issues currently under investigation at this time can be addressed in the most complete manner possible.

For the reasons identified above, we are postponing the preliminary determinations under section 733(c)(1)(B) of the Act, to no later than September 14, 2004, the 190th day after the date on which the investigation was initiated. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations. This notice is issued and published pursuant to sections 733(c)(2), 733(f) and 777(i) of the Act.

Dated: August 25, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–2004 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–818]

Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On July 27, 2004, the United States Court of International Trade issued an order to the Department to find that no countervailable subsidies are being provided for the production or exportation of certain hot-rolled carbon steel flat products from Thailand. Specifically, the Court reversed the Department's finding of a countervailable subsidy relating to a duty drawback program. The effect of removing this countervailable subsidy finding is the reduction of the overall countervailable subsidy rate to 1.80 percent *ad valorem*, which is *de minimis* for Thailand. *Royal Thai Government, et. al.,* v. *United States*, Consol. Court No. 02–00026, Slip. Op. 04–91 (CIT 2004) (''*Royal Thai*'').

Consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F.2nd 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that the *Royal Thai* decision was ''not in harmony'' with the Department's final determination.

EFFECTIVE DATE: August 6, 2004.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Dara Iserson, AD/CVD Enforcement Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1391 or (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2001, the Department of Commerce (''the Department'') issued a countervailing duty determination covering hot-rolled steel from Thailand. *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001). On December 3, 2001, the countervailing duty order was published. *Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand* 66 FR 60197 (December 3, 2001).

On February 1, 2002, respondents, the Royal Thai Government (RTG) and Sahaviriya Steel Industries (SSI), filed their complaint, appealing the final determination and countervailing duty order. *Royal Thai Government, et al.,* v. *United States*, Court. No. 02–00027. Petitioners, National Steel Corporation, Bethlehem Steel Corporation, and United States Steel Corporation, also appealed the final determination. *National Steel Corp, et al.,* v.*United States*, Court No. 02–00026, consolidated into *Royal Thai Government, et al.,* v. *United States*, Consol. No. 02–00026.

On May 19, 2004, the RTG and SSI obtained an injunction, applicable during the pendency of this litigation in the Court of International Trade, enjoining the United States from liquidating or causing or permitting liquidation of any entries of certain hot-rolled carbon steel flat products from Thailand that: (1) Were affected by the Department's investigative proceeding; (2) were produced and exported by SSI; (3) were entered or withdrawn from warehouse, for consumption, from January 1, 2002 through December 31, 2002; and, (4) remain unliquidated as of 5 p.m. on May 20, 2004.

On July 27, 2004, the CIT found that the Department's determination to countervail the duty drawback program in its entirety was not supported by substantial evidence and is not in accordance with law. Because the Court found that the drawback program is not countervailable, and the revised subsidy rate is *de minimis* (1.80 percent), it ordered the Department to find that no countervailable subsidies are being provided to the production or exportation of certain hot-rolled carbon steel flat products from Thailand. *See Royal Thai*.

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 516a(c)(1) and (e) of the Act, the Department must publish notice of a decision of the CIT which is not in harmony with the Department's determination. The CIT's decision in *Royal Thai* was not in harmony with the Department's *Final Determination*. Therefore, publication of this notice fulfills the statutory obligation.

Suspension of Liquidation

This notice will serve to continue the suspension of liquidation pending the expiration of the period to appeal the CIT's July 27, 2004, decision, or, if that decision is appealed, pending a final decision by the Court of Appeals for the Federal Circuit. Because the CIT issued an injunction on May 19, 2004, the Department will continue to suspend entries of hot-rolled steel from Thailand as specified in the injunction. The Department will revoke the Order and issue instructions covering these entries if the CIT's decision is not appealed, or if it is affirmed on appeal.

Dated: August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2012 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils From France: Notice of Amended Final Determination Pursuant to Final Court Decision and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination Pursuant to Final Court Decision and Revocation of Order.

SUMMARY: On September 24, 2002, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'') second remand determination of the *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 30774 (June 8, 1999) (''*French Stainless*''). *See Allegheny Ludlum Corp.* v. *United States,* 182 F. Supp. 2d 1357 (2002) (''*Allegheny II*''). The Department appealed this decision to the United States Court of Appeals for the Federal Circuit (''Federal Circuit''). On May 13, 2004, the Federal Circuit affirmed the CIT's decision in *Allegheny II. See allegheny Ludlum Corp.* v. *United States,* 367 F.3d 1339 (Fed. Cir. 2004) (''*Appellate Decision*''). Because all litigation in this matter has concluded, the Department is issuing this amended final determination in *French Stainless* in accordance with the CIT's decision and revoking the countervailing duty order.

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes at (202) 482–3986, AD/CVD Operations 1, Office I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1999, the Department published the final affirmative countervailing duty determination in *French Stainless.* The Department published the related countervailing duty order on August 6, 1999. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea,* 64 FR 42923 (August 6, 1999) (''*CVD Order*''). In its final determination, the Department found that a portion of the countervailable subsidy benefits bestowed on French steel producer Usinor Sacilor prior to a stock sale privatization passed through to Usinor, the privatized company and the respondent in the investigation. Usinor and one of the petitioners, Allegheny Ludlum Corporation (''Allegheny'' or ''the petitioner''), challenged this determination before the CIT. *See Usinor* v. *United States,* Court No. 99–09–00573 and *Allegheny Ludlum* v. *United States,* Court No. 99–09–00566. The cases were subsequently consolidated as *Allegheny Ludlum* v. *United States,* Court No. 99–09–00566 (also referred to as ''*French Stainless*''). On December 22, 1999, the CIT issued an injunction enjoining the Department from liquidating Usinor's, Ugine S.A.'s and Uginox's entries of subject merchandise that were entered, or withdrawn from warehouse, for consumption (1) on or after November 17, 1998, and before March 17, 1999; and (2) on or after August 6, 1999.

On February 2, 2000, while *French Stainless* was pending before the CIT, the Federal Circuit issued a ruling in *Delverde SRL* v. *United States*, 202 F.3d 1360 (Fed. Cir. 2000), *reh'g granted in part*, (June 20, 2000) (''*Delverde III*''), which had a direct impact on the change-in-ownership methodology at issue in *French Stainless*. Specifically, the Federal Circuit ruled that the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), did not allow the Department to presume, pursuant to a *per se* ruling, that subsidies granted to the former owner of a company's assets automatically ''passed through'' to the new owner following a sale; rather, the statute required the Department to examine the particular facts and circumstances of the sale, and determine whether the new owner directly or indirectly received both a financial contribution and a benefit. *Id.* at 1364. In light of *Delverde III*, the Department asked the CIT to remand *French Stainless* for reconsideration of the change-in-ownership issues. On August 15, 2000, with the parties' consent, the CIT remanded *French Stainless* to the Department to issue a determination consistent with U.S. law and *Delverde III. See Allegheny Ludlum Corp.* v. *United States*, Court No. 99–09–00566, Remand Order (August 15, 2000).

On December 13, 2000, having taken *Delverde III* into consideration, the Department issued the *Final Results of Redetermination Pursuant to Court Remand, Allegheny Ludlum Corp., et al.,* v. *United States*, Consol. Court No. 99–09–00566, Remand Order (CIT August 15, 2000) (December 13, 2000) (''*Remand Determination I*''). In that redetermination, having found (based on an analysis of certain factors) that Usinor was the same legal person before and after privatization, the Department determined that pre-privatization subsidy benefits remained attributable to Usinor following privatization. *See Remand Determination I* at 20.

On January 4, 2002, rejecting the Department's same-person analysis as contrary to the requirements of *Delverde III*, the CIT again remanded *French Stainless* to the Department. *See Allegheny Ludlum Corp.* v. *United States*, 182 F. Supp. 2d 1357 (2002) (''*Allegheny I*'').

Despite disagreement with the CIT's interpretation of *Delverde III*, the Department proceeded with a further redetermination as remanded and, on June 3, 2002, issued the *Results of Redetermination Pursuant to Court Remand, Allegheny Ludlum Corp. et al.,* v. *United States*, Court No. 99–09–00566, Remand Order (CIT January 4, 2002) (June 3, 2002) (''*Remand Determination II*''). In that redetermination, applying a fair-market-value analysis, the Department concluded that the purchasers/new owners of Usinor did not receive new countervailable subsidies as a result of the privatization transaction.

On September 24, 2002, upon consideration of *Remand Determination II*, the CIT issued *Allegheny Ludlum Corp.* v. *United States*, 246 F. Supp. 2d 1304 (2202) (''*Allegheny II*'') sustaining the results of *Remand Determination II.*

The Department subsequently appealed the case to the Federal Circuit. On May 13, 2004, the Federal Circuit issued the *Appellate Decision*, which affirmed the CIT's *Allegheny II* decision sustaining the results of *Remand Determination II.* Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the final determination and establishing the revised countervailing duty rates set forth below.

In a contemporaneous but separate proceeding, on November 17, 2003, the Department published a *Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products from the European Communities,* 68 FR 64858 (Nov. 17, 2003). The Department implemented, among other determinations, its Section 129 determination with respect to the *CVD Order.* The result was a revocation of the *CVD Order* effective November 7, 2003. The Department instructed U.S. Customs and Border Protection (''CBP'') to discontinue suspension of liquidation of shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 7, 2003.

Finally, the Department conducted two administrative reviews of the *CVD Order. See Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review,* 67 FR 62098 (Oct. 3, 2002) and *Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review,* 68 FR 53963 (Sept. 15, 2003). As a consequence of the injunction issued by the CIT on December 22, 1999, the Department did not order the liquidation of any entries covered by the administrative reviews. Those entries shall be liquidation as set forth below.

Amended Final Determination and Revocation of Order

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the final determination to reflect the results of *Remand Determination II, i.e.,* that the countervailable subsidy rate for Usinor during the period of investigation is 0.00 percent *ad valorem.* Because Usinor was the only known producer/exporter of the subject merchandise, we are also revoking the *CVD Order* for all entries after November 17, 1998 (the date on which the Department published the preliminary countervailing duty determination in *French Stainless*) through November 7, 2003 (the date on which the Department implemented its Section 129 determination on *French Stainless*).

Accordingly, pursuant to section 705(c)(2)(A)–(B) of the Act and effective as of the publication of this notice, the Department will instruct CBP to terminate the suspension of liquidation of, and liquidation without regard to

countervailing duties, all entries entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, and before March 17, 1999 (the date the Department instructed CBP to discontinue the suspensions of liquidation), and all entries entered, or withdrawn from warehouse, for consumption on or after August 6, 1999 (the date on which the Department published the *CVD Order*), and before November 7, 2003.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–20029 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082704C]

Proposed Information Collection; Comment Request; U.S. Canada Albacore Treaty Reporting System

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 1, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Svein Fougner, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd, Long Beach, CA 90802–4213 (phone 562–980–4040).

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1981 Treaty Between the Government of the United States and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty) provides for reciprocal privileges for vessels of one country to fish in waters under the fisheries jurisdiction of the other country and to use certain ports. H.R. 2584 was enacted in 2004 and amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to authorize the Secretary of Commerce, with the concurrence of the Secretary of State, to issue regulations needed to carry out U.S. obligations under the Treaty. On June 1, 2004, the National Marine Fisheries Service (NMFS) implemented such regulations. The regulations require U.S. vessel operators to report their desire to be on the list of vessels provided to Canada each year indicating vessels that are eligible to fish for albacore in waters under the fisheries jurisdiction of Canada; to report in advance their intention to fish or transit before crossing the border between the U.S. and Canada, or vice versa; to maintain and submit to NMFS logbooks of catch and effort covering fishing in Canadian waters; and to mark their fishing vessels to facilitate effective enforcement. The information collection was authorized by emergency approval from the Office of Management and Budget. This collection is intended to be processed through normal procedures including full public review.

II. Method of Collection

Fishing vessel operators and owners are responsible for providing to NMFS, by phone or in written form (fax, letter or email), information about their vessels and fishing intentions to establish eligibility for fishing in Canada's waters. Vessel operators must complete and submit paper logbooks to NMFS recording catch (by species), disposition of catch, and fishing effort (hours trolled and lines used) during their fishing in Canadian waters under the Treaty. Vessel operators must make reports to an NMFS-designated contractor at least 24 hours prior to entry to Canadian waters to fish under the Treaty and prior to returning to U.S. waters. Reports can be made by sideband radio, phone, fax, or email at any time of the day. Finally, vessel operators must mark their vessels with painted numbers and letters on the hull when fishing in Canadian waters under the Treaty.

III. Data

OMB Number: 0648–0492.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 700.

Estimated Time Per Response: 8 minutes.

Estimated Total Annual Burden Hours: 348.

Estimated Total Annual Cost to Public: $1,900.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 27, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–19972 Filed 8–31–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Withdrawal of One Commercial Availability Petition Under the United States—Caribbean Basin Trade Partnership Act (CBTPA)

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: The petitioner has notified CITA that it is withdrawing one of the four petitions it submitted for a determination that certain fancy polyester/rayon suiting fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On August 3, 2004, the Chairman of CITA received four petitions from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, alleging that certain woven fabrics, of certain specifications, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitions requested that apparel articles of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. On August 9, 2004, CITA published a notice in the **Federal Register** (69 FR 48224) soliciting public comments on these petitions, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner.

On August 24, 2004, CITA received letter from Sharretts, Paley, Carter & Blauvelt, P.C. withdrawing one of the petitions. The fabric covered by the petition that is being withdrawn was identified as Fabric 2 in the **Federal Register** notice. The specifications of this fabric are repeated below.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2818.

SUPPLEMENTARY INFORMATION:

Specifications:

Fabric 2

HTS Subheading:	5515.11.00.05
Fiber Content:	65% Polyester/35% Rayon
Width:	58/59 inches
Construction:	Two-ply carded and ring spun yarns in the warp and fill.
Dyeing:	Yarns are made from dyed fibers.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–1987 Filed 8–31–04; 8:45 a.m.]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: 30-day notice

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted the three 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). Copies of these individual ICRs (one for Senior Corps, one for AmeriCorps and one for Learn and Serve America), with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Shannon Maynard at (202) 606–5000, ext. 428. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of this publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

The initial 60-day **Federal Register** notice for these ICRs was published on April 2, 2004. The comment period for this notice has elapsed with no comments received, and the Corporation has received emergency approval from OMB.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information in necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submissions of responses.

Type of Review: Currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Appreciation—Senior Corps.

OMB Number: 3045—0091.

Agency Number: None.

Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.

Total Respondents: 200.

Frequency: One time.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Part II

Type of Review: Current approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—AmeriCorps.

OMB Number: 3045–0092.

Agency Number: None.

Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.

Total Respondents: 200.

Frequency: One time.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Part III

Type of Review: Currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—Learn and Serve America.

OMB Number: 3045–0093.

Agency Number: None.

Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.

Total Respondents: 200.

Frequency: One-time.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Description: The Spirit of Service Awards enable the Corporation to recognize exceptional organizations and program participants from each of the Corporation's three programs, Senior Corps, AmeriCorps, and Learn and

Serve America. In 2004, the Corporation plans to establish specific nomination guidelines for each of the programs and develop a formal nomination process, which involves voluntary information collection from non-government individuals.

Prior to 2003, AmeriCorps recognized its outstanding members annually through the All-AmeriCorps Awards, which were initiated in 1999 and presented by President Clinton as part of the 5th anniversary celebration of the program. Senior Corps had recognized its outstanding projects and volunteers at its own national conference, and Learn and Serve America recognized exemplary programs and participants through its Leaders School selection and the President's Student Service Awards.

Dated: August 26, 2004.

Sandy Scott,

Acting Director, Office of Public Affairs.

[FR Doc. 04–19902 Filed 8–31–04; 8:45 am]

BILLING CODE 6050–$$–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0037]

Federal Acquisition Regulation; Information Collection; Standard Form 1417, Presolicitation Notice and Response

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0037).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 1417, Presolicitation Notice and Response. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 1, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000–0037, Standard Form 1417, Presolicitation Notice and Response in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

Respondents: 5,310.

Responses Per Respondent: 8.

*Total Responses:*42,480.

Hours Per Response: .167.

Total Burden Hours: 3,398.40.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Standard Form 1417, Presolicitation Notice and Response in all correspondence.

Dated: August 26, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–19891 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095]

Federal Acquisition Regulation; Information Collection; Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0095).

SUMMARY: Under the provisions of the Paperwork ReductionAct of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning commerce patent regulations, Public Law 98–620. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 1, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.

9000–0095, Commerce Patent Regulations, in all correspondence

FOR FURTHER INFORMATION CONTACT Craig Goral, Contract Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

As a result of the Department of Commerce (Commerce) publishing a final rule in the **Federal Register** implementing Public Law 98–620 (52 FR 8552, March 18, 1987), a revision to FAR Subpart 27.3 to implement the Commerce regulation was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060). The final rule was published without change on June 21, 1990.

A Government contractor must report all subject inventions to the contracting officer, submit a disclosureof the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c), 52.228–12(c), and52.227–13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a); 27.304–1(e)(1)(i) and (ii); 27.304–1(e)(2)(i) and (ii); 52.227–12(f)(7); 52.227–14(e)(3)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–12(f)(5); 52.227–13(e)(1)).

In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(f)(2); 52.227–12(f)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(h); 52.227–12 (h)).

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 1,200.

Responses Per Respondent: 9.75.

Total Responses: 11,700.

Hours Per Response: 3.9;

Total Burden Hours: 45,630.Obtaining Copies or Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: August 27, 2004

Ralph J. De Stefano,

Director, Contract Policy Division.

[FR Doc. 04–19886 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0134]

Information Collection; Environmentally Sound Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning environmentally sound products. The clearance curently expires on October 31, 2004.

DATES: Submit comments on or before November 1, 2004.

FOR FURTHER INFORMATION CONTACT Craig Goral, Contract Policy Division, GSA (202) 501–3856.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0134, Environmentally Sound Products, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are (1) cement and concrete containing fly ash, (2) paper and paper products, (3) lubricating oil containing re-refined oil, (4) retread tires, and (5) building insulation products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. There are presently no known agency designated items.

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was $10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Respondents: 64,350.

Responses Per Respondent: 1.

Annual Responses: 64,350.

Hours Per Response: .5.

Total Burden Hours: 20,914.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035,1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB control No. 9000–0134, Environmentally Sound Products, in all correspondence.

Dated: August 27, 2004.

Ralph J. De Stefano,

Director, Contract Policy Division.

[FR Doc. 04–19887 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097]

Federal Acquisition Regulation; Information Collection; Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0097).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning information reporting to the Internal Revenue Service (IRS) (taxpayer identification number). The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 1, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Gerald Zaffos, Contract Policy Division, GSA (202) 208–6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting.

B. Annual Reporting Burden

Respondents: 250,000.
Responses Per Respondent: 2.
Total Responses: 500,000.
Hours Per Response: .10.
Total Burden Hours: 50,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

Dated: August 27, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–19888 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0024]

Federal Acquisition Regulation; Information Collection; Buy American Act Certificate

AGENCIES: Department of Defense (DOD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0024).

SUMMARY: Under the provisions of the Paperwork ReductionAct of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act Certificate. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 1, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0024, Buy American Act Certificate, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Act Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

Respondents: 3,906.
Responses Per Respondent: 15.
Total Responses: 58,590.
Hours Per Response: .109.
Total Burden Hours: 6,361.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration,

FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: August 27, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–19889 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045]

Federal Acquisition Regulation; Information Collection; Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0045).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bid guarantees, performance and payment bonds, and alternative payment protections. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 1, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW,Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0045, Bid, Performance, and Payment Bonds, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

These regulations implement the statutory requirements of he Miller Act (40 U.S.C. 270a–270e), which requires performance and payment bonds for any construction contract exceeding $100,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the regulations implement the note to 40 U.S.C. 270a, entitled ''Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation,'' which requires alternative payment protection for construction contracts that exceed $25,000 but do not exceed $100,000. Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts.

B. Annual Reporting Burden

Respondents: 11,304.

Responses Per Respondent: 5.

Total Responses: 56,520.

Hours Per Response: .42.

Total Burden Hours: 23,738.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0045, Bid, Performance, and Payment Bonds, in all correspondence.

Dated: August 26, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–19890 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–491–000]

ANR Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

August 25, 2004.

Take notice that on August 23, 2004, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective September 23, 2004:

Eighth Revised Sheet No. 71,
Second Revised Sheet No. 75D,
First Revised Sheet No. 75G.01,
Fourth Revised Sheet No. 76,
Fifth Revised Sheet No. 93.

ANR states that the purpose of the filing is to modify the applicable tariff sheets to show address changes due to the centralization of office locations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1995 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2210–104.

c. *Dates Filed:* August 16, 2004.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* September 27, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–104) on any comments or motions filed. 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 at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting approval to grant a variance for construction of a single-family pier located in the Pirates Cove subdivision. The pier would be located along the shoreline which is classified as Conservation/Environmental under APC's shoreline management plan (SMP).[1] The pier would be built overtop of the wetland vegetation. There is no dredging associated with the proposal.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE, Room 2A, Washington, D.C. 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 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. (See address in item j above.)

n. *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, 385.211, 385.214. 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.

o. *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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. Copies of the applications 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.

[1] The SMP was filed on September 2, 2003 and is a separate pending proceeding before the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1991 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–398–000]

Columbia Gas Transmission Corporation; Notice of Application

August 24, 2004.

Take notice that on August 18, 2004, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP04–398–000 pursuant to section 7(c) of the Natural Gas Act, and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, an application seeking a certificate of public convenience and necessity to realign a portion of the boundary and protective boundary surrounding its Crawford Storage Field that is located in Fairfield and Hocking Counties, Ohio, all as more fully described in the request which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273; or call (304) 357–2359, fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: September 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2003 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–492–000]

El Paso Natural Gas Company; Notice of Tariff Filing

August 25, 2004.

Take notice that on August 23, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the tariff sheets listed in Appendix A to the filing, to become effective September 23, 2004.

El Paso states that the tariff sheets are filed to update the Rate Schedule FT–1 and IT–1 Form of Service Agreements and provide additional contracting flexibility.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1996 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–488–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2004.

Take notice that on August 23, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2004:

66th Revised Sheet No. 8A
58th Revised Sheet No. 8A.01
58th Revised Sheet No. 8A.02
Third Revised Sheet 8A.03
18th Revised Sheet No. 8A.04
61st Revised Sheet No. 8B
54th Revised Sheet No. 8B.01
10th Rev. Sheet No. 8B.02

FGT states that the tariff sheets listed above are being filed pursuant to section 22 of the General Terms and Conditions of FGT's Tariff to reflect a decrease in the ACA charge to 0.19¢ per MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the

''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1993 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT04–2–000, ER04–116–000, ER04–157–000, EL01–39–000]

ISO New England Inc.; Bangor Hydro-Electric Company, et al.; the Consumers of New England v. New England Power Pool; Notice of Extension of Time

August 25, 2004.

On August 20, 2004, ISO New England Inc. (ISO), and the New England Transmission Owners [1] (collectively, ''New England TOs'') filed a joint motion for an extension of time to make a compliance filing relating to reversionary interests and revisions to the participants agreement ordered by the Commission in the Order conditionally approving the formation of a Regional Transmission Organization for New England, in Docket Nos. RT04–2–000, *et al.*, 106 FERC 61,280 (2004).

The ISO and the New England TOs state that an extension of time is necessary to allow the parties to continue ongoing settlement discussions aimed at resolving outstanding issues in these proceedings. The motion also states that an extension of time will facilitate the implementation of an RTO for New England.

Upon consideration, notice is hereby given that the date for filing the portion of the compliance filing relating to reversionary interests and revisions to the participants agreement required by the March 24, 2004 Order is granted to and including September 13, 2004, as requested by ISO New England and New England TOs.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1989 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

[1] The New England TOs consist of the following companies: Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; Northeast Utilities Service Company on behalf of its operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, and Cambridge Electric Light Company; The United Illuminating Company; and Vermont Electric Power Company, Inc.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1893–042]

Public Service Company of New Hampshire (PSNH); Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 26, 2004.

a. *Type of Application:* New major license.

b. *Project No.:* P–1893–042.

c. *Date filed:* December 30, 2003.

d. *Applicant:* Public Service Company of New Hampshire (PSNH).

e. *Name of Project:* Merrimack River Project.

f. *Location:* On the Merrimack River, in Merrimack and Hillsborough counties, New Hampshire. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* James J. Kearns, 780 North Commercial Street, P.O. Box 330, Manchester, NH, 03105 (603)–634–2936.

i. *FERC Contact:* Steve Kartalia, *Stephen.kartalia@ferc.gov* (202) 502–6131.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor 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.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The Merrimack project consists of three developments described below:*

The Amoskeag Development consisting of: (1) A 29-foot-high, 710-foot-long concrete gravity dam comprised of: (i) a low crest section with 5-foot-high flashboards; and (ii) a high crest section with 3-foot-high flashboards; (2) a 7-mile-long, 478-acre reservoir; (3) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 16,000 kW; (4) a 415-foot-long, 34.5-kV double circuit transmission line; and (5) other appurtenances.

The Hooksett Development consisting of: (1) A dam comprised of: (i) a 340-foot-long stone masonry section with 2-foot-high flashboards connected to; (ii) a 250-foot-long concrete section with 2-foot-high flashboards; (2) a 15-foot by 20-foot Taintor gate; (3) a 5.5-mile-long, 405-acre reservoir; (4) a powerhouse containing a single generating unit with an installed capacity of 1,600 kW; and (5) other appurtenances.

The Garvins Falls Development consisting of: (1) An 18-foot-high, 550-foot-long concrete and granite gravity dam comprised of: (i) a low crest section with 3-foot-high flashboards; and (ii) a high crest section with 1.2-foot-high flashboards; (2) an 8-mile-long reservoir; (3) a 500-foot-long water canal with a 10-foot-wide waste gate; (4) two powerhouses, each containing two generating units for a total installed capacity of 12,300 kW; (5) a 340-foot-long, 34.5-kV transmission line; and (6) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the summer of 2005.

Notice that application is ready for environmental analysis: January 2005.

Notice of the availability of the EA: June 2005.

Ready for Commission decision on the application: September 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1990 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–493–000]

Southern LNG Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2004.

Take notice that on August 23, 2004, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 (Tariff), the following revised sheets to become effective October 1, 2004:

Ninth Revised Sheet No. 5,
Ninth Revised Sheet No. 6.

SLNG states that the proposed tariff sheets revise the Commission's ACA charge from .21¢ per Dth to .19¢ per Dth. SLNG states that the October 1, 2004 proposed effective date for the tariff sheets submitted in this filing coincides with the effective date of the revised ACA charge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1997 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–495–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2004.

Take notice that on August 23, 2004, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets to become effective October 1, 2004:

Sixty-second Revised Sheet No. 14
Eighty-third Revised Sheet No. 15
Sixty-second Revised Sheet No. 16
Eighty-third Revised Sheet No. 17
Forty-sixth Revised Sheet No. 18
Thirteenth Revised Sheet No. 22

Southern states that the proposed tariff sheets revise the Commission's ACA charge from .21¢ per Dth to .19¢ per Dth. Southern states that the October 1, 2004 proposed effective date for the tariff sheets submitted in this filing coincides with the effective date of the revised ACA charge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–1998 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–496–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 25, 2004.

Take notice that on August 23, 2004, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective October 1, 2004:

Seventh Revised Volume No. 1:

Sixty-third Revised Sheet No. 14,
Eighty-fourth Revised Sheet No. 15,
Sixty-third Revised Sheet No. 16,
Eighty-fourth Revised Sheet No. 17,
Forty-seventh Revised Sheet No. 18.

First Revised Volume No. 2A:

Third Revised Sheet No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–1999 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–467–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 25, 2004.

Take notice that on August 12, 2004, Transcontinental Gas Pipe Line Corporation (Transco) filed a report reflecting the flow through of refunds received from Dominion Transmission, Inc.

Transco states that it refunded to its LSS and GSS customers $58,099.62 resulting from the refund of Dominion Transmission, Inc. Docket No. RP04–394–000. Transco further states that the refund covers the period from April 1, 2003 to March 31, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Intervention and Protest Date: 5 p.m. Eastern Time on September 2, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1992 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–490–000]

Transwestern Pipeline Company; Notice of Tariff Filing

August 25, 2004.

Take notice that on August 23, 2004, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 2004:

One Hundred and Twenty-Ninth Revised Sheet No. 5,
Thirty-Fourth Revised Sheet No. 5A,
Twenty-Sixth Revised Sheet No. 5A.02,
Twenty-Sixth Revised Sheet No. 5A.03,
Thirty First Revised Sheet No. 5B.

Transwestern states that the tariff sheets listed above are being filed pursuant to section 23 of the General Terms and Conditions (GTC) of Transwestern's Tariff to reflect a decrease in the ACA charge to 0.19¢ per MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1994 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–466–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2004.

Take notice that on August 20, 2004, Young Gas Company (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No 1, the following tariff sheets to become effective September 20, 2004:

Fourth Revised Sheet No. 46
Fourth Revised Sheet No. 77
Second Revised Sheet No. 106

Young states that these tariff sheets are filed to revise references to marketing affiliates and electronic bulletin board (EBB) posting requirements in conformance with the Commission's Order No. 2004.

Young states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2002 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–150–000, et al.]

CCFC Development Company LLC, et al.; Electric Rate and Corporate Filings

August 25, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. CCFC Development Company LLC; Blue Spruce Energy Center, LLC; Fox Energy Company LLC; Calpine Fox LLC

[Docket Nos. EC04–150–000, EL04–127–000]

Take notice that on August 23, 2004, CCFC Development Company LLC, Blue Spruce Energy Center, LLC, Fox Energy Company LLC, and Calpine Fox LLC (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby: (1) CCFC Development Company LLC and Blue Spruce Energy Center, LLC propose to sell their respective membership interests in Fox Energy Company LLC to Fox Energy OP LLC; (2) Fox Energy Company LLC proposes to lease to Calpine Fox LLC an approximately 600 megawatt electric generating facility currently under construction in Wisconsin; and (3) Fox Energy Company LLC proposes to assign a power sales agreement to Calpine Fox LLC. Applicants also request that the Commission, pursuant to section 201(e) of the FPA, disclaim jurisdiction over the proposed passive owner participant and passive owner lessor of the Fox Energy Center.

Comment Date: 5 p.m. eastern standard time on September 13, 2004.

2. Allegheny Energy Supply Company, LLC; Allegheny Energy Supply Gleason Generating Facility, LLC; Allegheny Energy Supply Hunlock Creek, LLC; Allegheny Energy Supply Lincoln Generating Facility, LLC, Allegheny Energy Supply Wheatland Generating Facility, LLC; Buchanan Generation, LLC; Green Valley Hydro, LLC

[Docket Nos. ER00–814–003, ER01–2067–003, ER01–332–002, ER01–2066–003, ER01–2028–003, ER02–1638–002, and ER00–2924–003]

Take notice that on August 18, 2004, Allegheny Energy Supply Company, LLC (AE Supply) and its affiliates, Allegheny Energy Supply Gleason Generating Facility, LLC; Allegheny Energy Supply Hunlock Creek, LLC; Allegheny Energy Supply Lincoln Generating Facility, LLC; Allegheny Energy Supply Wheatland Generating Facility, LLC; Buchanan Generation, LLC; and Green Valley Hydro, LLC (collectively, AE Supply Affiliates), submitted proposed revisions to the Code of Conduct sections of their FERC Electric Tariffs.

Comment Date: 5 p.m. eastern standard time on September 8, 2004.

3. PJM Interconnection, L.L.C.

[Docket No. ER04–653–002]

Take notice that on August 23, 2004, PJM Interconnection, L.L.C. (PJM) submitted a clarification and correction to a response to questions contained in the letter issued on July 22, 2004 by the Commission's Office of Markets, Tariffs, and Rates in Docket No. ER04–653–002.

Comment Date: 5 p.m. eastern standard time on September 3, 2004.

4. Central Maine Power Company

[Docket No. ER04–1143–000]

Take notice that on August 23, 2004, Central Maine Power Company (CMP) submitted for filing a Notice of Cancellation unexecuted local network service agreement, an unexecuted local network operating agreement, and an unexecuted long term point-to-point transmission service agreement with Boralex Athens Energy. CMP requests an effective date of July 20, 2004.

Comment Date: 5 p.m. eastern standard time on September 13, 2004.

5. Southern California Edison Company

[Docket No. ER04–1145–000]

Take notice that on August 23, 2004, Southern California Edison Company (SCE) submitted for filing an Interconnection Facilities Agreement (Interconnection Agreement, Service Agreement No. 114 under SCE's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff, First Revised Volume No. 5) and an associated Service Agreement for Wholesale Distribution Service (WDAT Service Agreement, Service Agreement No. 115 under the WDAT) between SCE and the City of Moreno Valley, California (Moreno Valley). SCE states that the purpose of the Interconnection Agreement and the WDAT Service Agreement is to specify the terms and conditions under which SCE will provide Wholesale Distribution Service from the California Independent System Operator Controlled Grid at SCE's Valley Substation to a new SCE-Moreno Valley 12 kV interconnection at Moreno Valley-owned property located on the east side of Graham Street, between Alessandro Boulevard and Brodiaea Avenue in the city of Moreno Valley, California. SCE requests an effective date of August 24, 2004.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Moreno Valley.

Comment Date: 5 p.m. eastern standard time on September 13, 2004.

6. Southern California Edison Company

[Docket No. ER04–1146–000]

Take notice that on August 23, 2004, Southern California Edison Company (SCE) submitted for filing an Interconnection Facilities Agreement (Interconnection Agreement, Service Agreement No. 116 under SCE's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff, First Revised Volume No. 5) and an associated Service Agreement for Wholesale Distribution Service (WDAT Service Agreement, Service Agreement No. 117 under the WDAT) between SCE and the City of Moreno Valley, California (Moreno Valley). SCE states that the purpose of the Interconnection Agreement and the WDAT Service Agreement is to specify the terms and conditions under which SCE will provide Wholesale Distribution Service from the California Independent System Operator Controlled Grid at SCE's Valley Substation to a new SCE-Moreno Valley 12 kV interconnection at Moreno Valley owned property located on Globe Street, East of Perris Boulevard in the City of Moreno Valley, California. SCE requests an effective date of August 24, 2004.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Moreno Valley.

Comment Date: 5 p.m. eastern standard time on September 13, 2004.

7. Florida Power Corporation

[Docket No. ER04–1147–000]

Take notice that, on August 23, 2004, Florida Power Corporation, doing business as Progress Energy Florida, Inc. (PEF) filed, pursuant to section 205 of the Federal Power Act, a rate schedule for cost-based power sales to Reedy Creek Improvement District (Reedy Creek), Rate Schedule FERC No. 190. PEF requests an effective date of January 1, 2006.

PEF states that the copies of the filing were served upon Reedy Creek and the Florida Public Service Commission.

Comment Date: 5 p.m. eastern standard time on September 13, 2004.

8. Calpine Fox LLC

[Docket No. ER04–1148–000]

Take notice that on August 23, 2004, Calpine Fox LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant states that it will finish the construction, testing, leasing, and operation of an approximately 600 megawatt combined-cycle electric generation facility in Kaukauna, Outagamie County, Wisconsin. Applicant requests an effective date of March 1, 2005.

Comment Date: 5 p.m. eastern standard time on September 13, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–1988 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–230–005, et al.]

Alliant Energy Corporate Services, Inc., et al.; Electric Rate and Corporate Filings

August 24, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–230–005]

Take notice that on August 20, 2004, Alliant Energy Corporate Services, Inc., (Alliant Energy) tendered for filing updated market power analyses in compliance with Commission orders in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), order on reh'g 108 FERC ¶ 61,026 (2004), and *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

Comment Date: 5 p.m. eastern standard time on September 10, 2004.

2. New Century Services, Inc.; Xcel Energy Services, Inc

[Docket Nos. ER99–1610–009 and ER01–205–005]

Take notice that, on August 19, 2004, Xcel Energy Services Inc., (XES) on behalf of the Xcel Energy Operating Companies, Northern States Power Company, Northern States Power Company, Public Service Company of Colorado and Southwestern Public Service Company submitted a notification regarding change in status pursuant to the orders granting market-based rate authority to these entities. (New Century Services, Inc., 86 FERC ¶ 61,307 (1999) and Xcel Energy Services Inc., Commission letter order issued January 30, 2001 in Docket No. ER01–205–000 and ER01–205–001).

Xcel Energy Services Inc. indicates that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Comment Date: 5 p.m. eastern standard time on September 9, 2004.

3. New York Independent System Operator, Inc.

[Docket No. ER04–791–000]

Take notice that on August 20, 2004 the New York Independent System Operator, Inc. (NYISO) filed a Notice of Withdrawal of proposed tariff provisions that were designed to implement its proposed interim scheduling procedures for external transactions at the Shoreham Proxy Generator Bus.

NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, ISO New England Inc., the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern standard time on September 10, 2004.

4. American Electric Power Service Corporation

[Docket No. ER04–1141–000]

Take notice that on August 20, 2004, American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company (Ohio Power) (collectively, the AEP Eastern Operating Companies), tendered for filing a PJM Services Agreement between the AEP Eastern Operating Companies and Buckeye Power, Inc. AEPSC also files, on behalf of Ohio Power, Amendment No. 9 to the Station Agreement and a cardinal station NOx emission allowance agreement among Ohio Power, Buckeye, and Cardinal Operating Company.

AEPSC states that copies of the filing were served on Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment Date: 5 p.m. eastern standard time on September 10, 2004.

5. Lower Mount Bethel Energy, LLC

[Docket No. ER04–1142–000]

Take notice that on August 20, 2004, Lower Mount Bethel Energy, LLC (LMBE) submitted a rate schedule pursuant to which it specifies its revenue requirement for providing cost-based reactive support and voltage control from generation sources service (Reactive Power). LMBE states that it will provide Reactive Power from its natural gas-fueled electric generating facility located in Lower Mount Bethel Township, Northampton County, Pennsylvania (Facility) in the control area administered by the PJM Interconnection, L.L.C. (PJM). LMBE respectfully requests an effective date of September 1, 2004.

LMBE states that a copy of the filing was served upon PJM.

Comment Date: 5 p.m. eastern standard time on September 10, 2004.

6. New York Independent System Operator, Inc.

[Docket No. ER04–1144–000]

Take notice that on August 20, 2004, the New York Independent System Operator, Inc. (NYISO) filed modifications to its Open Access Transmission Tariff (OATT) to implement a Comprehensive Reliability Planning Process. NYISO requests an effective date on October 19, 2004.

NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York State Public Service Commission. NYISO states that it has also served the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern standard time on September 10, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene

or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–2001 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–365–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northeast Storage Project and Request for Comments on Envrionmental Issues

August 25, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Northeast Storage Project involving construction and operation of facilities by Dominion Transmission, Inc. (Dominion), in Cattaraugus County, New York, Clinton, McKean, and Potter Counties, Pennsylvania, and Lewis County, West Virginia. These facilities would consist of about 21.1 miles of 20-inch-diameter pipeline, 10 segments of 8-to 16-inch diameter pipeline totaling about 2.5 miles, two new compressor stations totaling 8,290 horsepower (hp), two meter stations, replacement of a meter, drilling four new injection/withdrawal wells, conversion of a production well to an observation well, and abandonment in place of two segments of 8-inch-diameter pipeline totaling about 1.8 miles. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

Summary of the Proposed Project

Dominion wants to provide 9.4 billion cubic feet (Bcf) of firm natural gas storage service and 163,017 dekatherms per day (Dt/d) of winter-season firm transportation service. Dominion seeks authority to construct and operate:

- Four new gas storage wells at the existing Quinlan Well Field and Gas Storage Pool, and the conversion of a production well to an observation well in Cattaraugus County, New York;
- 21.1-mile-long, 20-inch-diameter TL–527 Pipeline in McKean and Potter Counties, Pennsylvania, and Cattaraugus County, New York;
- 0.9-mile-long, 8-inch-diameter LN–2471–S Pipeline in Potter County, Pennsylvania;
- 0.1-mile-long, 8-inch-diameter LN–15 CHG–1 Pipeline in Potter County, Pennsylvania;
- 0.7-mile-long, 16-inch-diameter, QL–1 Pipeline in Cattaraugus County, New York;
- Five 8-inch-diameter well pipelines (QL–3, QL–4, QL–5, QL–6, and QL–7) totaling 0.11 mile in Cattaraugus County, New York;
- 0.5-mile-long and 0.1-mile-long, 16-inch-diameter pipelines (TL–533 and TL–534, respectively) in Lewis County, West Virginia;
- Sharon Measuring and Regulating Facility in Potter County, Pennsylvania;
- Walcott Measuring and Regulating Facility in Potter County, Pennsylvania;
- Leidy meter replacement in Clinton, County, Pennsylvania;
- 4,740 hp Quinlan Compressor Station in Cattaraugus County, New York;
- 3,550 hp Wolf Run Compressor Station in Lewis County, West Virginia.

In addition, Dominion seeks to abandon in place:

- 1.76 miles of the 8-inch-diameter LN–15 Pipeline in Potter County, Pennsylvania; and
- .01 mile of the 8-inch-diameter LN–250S Pipeline in Potter County, Pennsylvania.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would require about 255 acres of land. Following construction, about 140.1 acres would be maintained as new permanent right-of-way and aboveground facility sites. The remaining 114.9 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils,
- Land use,
- Water resources, fisheries, and wetlands,
- Cultural resources,
- Vegetation and wildlife,
- Endangered and threatened species,
- Public safety.

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[1] The appendixes referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

We will also evaluate potential alternatives to the proposed project or portions of the project, and make recommendations, if appropriate, on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA might be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP04–365–000.
- Mail your comments so that they will be received in Washington, DC on or before September 27, 2004.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''Documents & Filing, e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site *http://www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2000 Filed 8–31–04; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0230]; FRL–7370–3]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0230, must be received on or before October 1, 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: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0230. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0230. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0230. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0230.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0230. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

File Symbol: 68467–U. *Applicant*: Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Product Name*: Mycogen Brand B.t. Cry1F Event TC6275 Corn. Plant-incorporated protectant. *Active ingredient*: *Bacillus thuringiensis* moCry1F protein and the genetic material for its production (plasmid insert PHP 12537) in event DAS–06275–8 corn. *Proposed classification/Use*: None.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 18, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–19615 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0229]; FRL–7370–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0229, must be received on or before October 1, 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: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0229. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0229. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0229. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0229.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0229. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 29964–U. *Applicant*: Pioneer Hi-Bred International, A Dupont Company, 7250 N.W. 62nd Ave., P.O. Box 552, Johnston, IA 50131–0552. *Product Name*: Pioneer Brand B.t. Cry34/35Ab1 Insect Resistant Corn Seed. Plant-incorporated protectant. *Active ingredient*: *Bacillus thuringiensis* Cry34/35Ab1 insecticidal crystal protein and the genetic material for its production (plasmid insert PHP 17662) in event DAS–59122–7 corn. *Proposed classification/Use*: None.

2. *File Symbol*: 68467–L. *Applicant*: Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Product Name*: Mycogen Brand B.t. Cry34/35Ab1 Construct 17662 Corn. Plant-incorporated protectant. *Active ingredient*: *Bacillus thuringiensis* Cry34/35Ab1 insecticidal crystal protein and the genetic material for its production (plasmid insert PHP 17662) in event DAS–59122–7 corn. *Proposed classification/Use*: None.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 23, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–19717 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0282; FRL–7676–4]

Cyprodinil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0282, must be received on or before October 1, 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: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0282. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or 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.

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C. How and To Whom Do I Submit Comments?

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1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0282. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0282. 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.

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2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0282.

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR–4)

Pesticide Petitions (PP) 3E6700 and 3E6638

EPA has received pesticide petitions (PP 3E6700 and 3E6638) from the IR–4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.532 by establishing tolerances for residues of cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine, in or on the following raw agricultural commodities (RACs):

- PP 3E6700 proposes a tolerance for bean, dry and bean, succulent, at 0.6 parts per million (ppm).
- PP 3E6638 proposes a tolerance for leafy greens subgroup 4A, except spinach, at 30 ppm.

Additional data may be needed before EPA rules on the petitions. Syngenta Crop Protection, Inc., Greensboro, NC 27409 is the manufacturer of the chemical pesticide, cyprodinil. Syngenta prepared and submitted the following summary of information, data, and arguments in support of the pesticide petitions. This summary does not necessarily reflect the findings of EPA.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of cyprodinil is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method*. Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–631B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. An extensive database of method validation data using this method on various crop commodities is available.

3. *Magnitude of residues*. Residue data to support the requested tolerances for crops in this submission have been submitted. The requested tolerances are adequately supported.

B. Toxicological Profile

An assessment of toxic effects caused by cyprodinil is discussed in detail in Unit III.A. and Unit III.B. in the **Federal Register** of September 19, 2003 (68 FR 54808) (FRL–7326–4). It is a final rule establishing tolerances for residues of cyprodinil in or on several raw agricultural commodities. Interested parties are referred to that document for an in depth discussion of toxicological findings.

1. *Animal metabolism*. The metabolism of cyprodinil in rats is adequately understood.

2. *Metabolite toxicology*. The residues of concern for tolerance setting purposes is the parent compound. Based on structural similarities to genotoxic nucleotide analogs, there was concern that the pryimidine metabolites (CGA–249287, NOA–422054) may be more toxic than the parent compound. However, EPA's review indicates similar results in an acute oral and mutagenicity studies with both the parent compound and the CGA–249287 metabolite. EPA concluded that the toxicity of the CGA–249287 and NOA–422054 metabolites is no greater than that of the parent. This conclusion is conditional on submission and review

of confirmatory data of an acute oral toxicity study and bacterial reverse mutation assay for the NOA–422054 metabolite. Although the metabolites CGA–232449 and CGA–263208 were determined to be of potential toxicological concern, they are not expected to be more toxic than cyprodinil per se.

3. *Endocrine disruption*. Cyprodinil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that cyprodinil might have any effects on endocrine function related to development and reproduction. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. Tier III acute and chronic dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM™), version 7.87 from Exponent. Empirically derived processing studies for apple juice (0.39X), apple pomace (5.22X), grape juice (0.29X), dried prunes (2.05X), and peeled lychees (0.01X) were used in these assessments. The apple juice processing factor was used as a surrogate for pear juice. All other processing factors used the DEEM™ defaults. All consumption data for these assessments were taken from the United States Department of Agriculture's (USDA's) Continuing Survey of Food Intake by individuals (CSFII) with the 1994–1996 consumption database and the Supplemental CSFII children's survey (1998) consumption database. These exposure assessments included all registered uses and pending uses on bean, dry and bean, succulent and the leafy greens subgroup 4A, except spinach. Secondary residues in animal commodities were estimated.

i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed. These assessments utilized residue data from field trials where cyprodinil was applied at the maximum intended use rate and samples were harvested at the minimum pre-harvest interval (PHI) to obtain maximum residues. Percent of crop treated values were estimated based upon economic, pest, and competitive pressures.

ii. *Acute exposure*. The acute dietary risk assessment was performed for the females 13–49 years old population subgroup only, since no toxicological endpoint of concern was identified for the other population subgroups. An acute reference dose (aRfD) of 1.5 mg/kg-bw/day for the females 13–49 years subpopulation only was based on a no observable adverse effect level (NOAEL) of 150 mg/kg-bw/day based on a rabbit developmental study and an uncertainty factor of 100X. No additional FQPA safety factor was applied. For the purpose of the aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE), which was calculated by dividing the NOAEL by the exposure. In addition, exposure was expressed as a percent of the acute reference dose (%aRfD). Acute exposure to the females 13–49 years subpopulation resulted in a MOE of 899 (1.1% of the aRfD of 1.5 mg/kg-bw/day). Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures above the benchmark MOE, Syngenta believes that there is a reasonable certainty that no harm will result from the acute dietary (food) exposures arising from the current and proposed uses for cyprodinil.

iii. *Chronic exposure*. The chronic reference dose (cRfD) for cyprodinil is 0.03 mg/kg-bw/day and is based on a chronic rat study with a NOAEL of 2.7 mg/kg-bw/day and an uncertainly factor of 100X. No additional FQPA safety factor was applied. The cyprodinil Tier III chronic dietary exposure assessment was based upon residue field trial results. For the purpose of the aggregate risk assessment, the exposure values were expressed in terms of MOE, which was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the chronic reference dose (%cRfD). Chronic exposure to the most sensitive subpopulation (children 1 and 2 years old) resulted in a MOE of 1,074 (8.4% of the cRfD of 0.03 mg/kg-bw/day). Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures resulting in an MOE above the benchmark MOE, Syngenta believes that there is a reasonable certainty that no harm will result from the chronic dietary (food) exposures arising from the current and proposed uses for cyprodinil.

iv. *Drinking water*. Another potential source of exposure of the general population to residues of cyprodinil are residues in drinking water. The degradation of cyprodinil is microbially mediated with an aerobic soil metabolism half-life of less than 46 days. Cyprodinil Kocs vary from 1,550 to 2,030 and cyprodinil exhibits a strong binding affinity for soil. Cyprodinil is stable to hydrolysis but degrades rapidly under photolytic conditions.

Estimated Environmental Concentrations (EECs) of cyprodinil in drinking water were determined by EPA. The EPA uses the Screening Concentrations in Groundwater (SCI-GROW) model to determine acute and chronic estimated environmental concentrations in groundwater, and the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to determine acute and chronic estimated environmental concentrations in surface water. Based on the model outputs, the EECs for cyprodinil (plus the CGA–249287 metabolite) are 0.16 parts per billion (ppb) for acute and chronic exposure to groundwater and 32.9 ppb and 8.1 ppb for acute and chronic exposure, respectively, to surface water.

The Acute Drinking Water Level of Comparison (DWLOC) was calculated based on an acute Population Adjusted Dose (aPAD) of 1.5 mg/kg/day. For the acute assessment, the females (13–49 years) subpopulation generated an acute DWLOC of 44,500 ppb. The acute DWLOC of 44,500 ppb is considerably higher than the acute EEC of 32.9 ppb. Chronic Drinking Water Levels of Comparison (DWLOC) were calculated based on a chronic Population Adjusted Dose (cPAD) of 0.03 mg/kg/day. The children 1–2 years old subpopulation generated the lowest chronic DWLOC of 275 ppb. Thus, the chronic DWLOC of 275 ppb is considerably higher than the chronic EEC of 8.1 ppb.

2. *Non-dietary exposure*. There is a potential residential post-application exposure to adults and children entering residential areas treated with cyprodinil. Since the Agency did not select a short-term endpoint for dermal exposure, only intermediate dermal exposures were considered. Based on the residential use pattern, no long-term post-application residential exposure is expected.

3. *Acute and chronic aggregate exposure*. Based on the completeness and reliability of the toxicity data supporting these petitions, and the results of the above exposure calculations, Syngenta believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues arising from all current and proposed cyprodinil uses, including anticipated dietary exposure from food, water, and all other types of non-occupational exposures.

D. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether

to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances.

E. Safety Determination

The chronic dietary exposure analysis (food only) indicated that exposure from all established and proposed cyprodinil uses is 8.4% of the cRfD of 0.03mg/kg-bw/day for the most sensitive subpopulation, children 1 and 2 years old. Estimated concentrations of cyprodinil residues in surface and groundwater are below the calculated acute DWLOC. The children 1 and 2 years old subpopulation has the lowest chronic DWLOC of approximately 275 ppb, which is considerably higher than the chronic EEC of 8 ppb.

The acute dietary exposure analysis (food only) showed that for female 13–49 years old, exposure from all established and proposed cyprodinil uses would be 1.1% of the aRfD of 1.5 mg/kg-bw/day. Acute DWLOC were calculated based on an aPAD of 1.5 mg/kg/day. The females (13–49 years) subpopulation generated an acute DWLOC of approximately 44,500 ppb. The acute EEC of 33 ppb is considerably less than 44,500 ppb. Therefore, Syngenta concludes that the chronic and aggregate risk from cyprodinil residues in food and drinking water would not be expected to exceed EPA's level of concern.

Syngenta has considered the potential aggregate exposure from food, water, and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the cRfD and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to cyprodinil.

F. International Tolerances

There are no Codex maximum residue levels established for cyprodinil.

[FR Doc. 04–19823 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0227; FRL–7370–7]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 67979–EUP–U from Syngenta Seeds, Inc. - Field Crops - NAFTA requesting an experimental use permit (EUP) for modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in Event MIR604 corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0227, must be received on or before October 1, 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: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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3. Provide copies of any technical information and/or data you used that support your views.
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5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

II. Background

Syngenta Seeds is proposing to test 575 acres of Event MIR604 corn from March 2005 through February 2006 in Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Puerto Rico, South Dakota, Texas, and Wisconsin. Testing is to include breeding and observation, efficacy, agronomic observation, inbred and hybrid production, regulatory studies, and demonstration field trials.

III. What Action is the Agency Taking?

Following the review of the Syngenta Seeds, Inc. - Field Crops - NAFTA application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 23, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–19822 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7808–6]

Carolina Steel Drum Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlements.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into two settlements for the partial reimbursement of past response costs with Rutland Plastics Technologies, Inc. and West Drum Company pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Carolina Steel Drum Superfund Site (Site) located in Rock Hill, York County, South Carolina. EPA will consider public comments on the proposed settlements until October 1, 2004. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–SEIMB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@EPA.Gov.*

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: April 30, 2004.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 04–19922 Filed 8–31–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 9, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before November 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1043.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, CC Docket No. 98–67 and CC Docket No. 90–571 *(Report and Order, Order on Reconsideration),* FCC 04–137.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 11 (4 IP Relay providers and 7 VRS providers).

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 110 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On June 30, 2004, the Commission released the *Report and Order, Order on Reconsideration, (Report and Order)* In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67 and CC Docket No. 90–571, FCC 04–137. In the *Report and Order,* the Commission grants Video Relay Service (VRS) waiver requests of the following Telecommunications Relay Services (TRS) mandatory minimum requirements: (1) 47 CFR Section 64.604 (a)(3) types of calls that must be handled; (2) 47 CFR Section 64.604 (a)(3)(iv) pay-per-call services; (3) 47 CFR Section 64.604 (a)(4) emergency call handling; (4) 47 CFR Section 64.604 (b)(2) speed of answer; and (5) 47 CFR Section 64.604 (b)(3) equal access to interexchange carriers. These waivers are granted provided that VRS providers

submit an annual report to the Commission, in a narrative form, detailing: (1) The provider's plan or general approach to meet the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standards; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waivers should continue in effect. Further, as requested by the parties and for administrative convenience, VRS providers may combine the reporting requirement established in the *Report and Order* with existing VRS/IP Relay reporting requirements, which are scheduled to be submitted annually on April 16th of each year pursuant to the *IP Relay Order on Reconsideration and Second Improved TRS Order & NPRM.* In the *Order on Reconsideration,* the Commission affirms, except as otherwise specifically provided therein, the cost recovery methodology for VRS established in the June 30, 2003 *Bureau TRS Order.* The Commission adjusts the VRS compensation rate to a per-minute compensation rate of $8.854. On June 30, 2004, the Commission also released a *Further Notice of Proposed Rulemaking,* In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 04–137, that addressed a number of outstanding issues with respect to VRS and IP Relay, none of which have any implications under the Paperwork Reduction Act.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–18552 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0957.

Title: Wireless Enhanced 911 Service.

Form No: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 2,500.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 7,500 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Fourth Memorandum Opinion and Order, (FCC 00–326, CC Docket No. 94–102), adopted and released in 2000, responded to petitions for reconsideration of certain aspects of the Third Report and Order in this proceeding concerning the establishment of a nationwide wireless enhanced 911 emergency communications service. This decision revised, among other things, the deployment schedule that must be followed by wireless carriers that choose to implement E911 service using a handset-based technology. The Paperwork Reduction Act (PRA) burden involves guidelines for filing successful requests for waiver of the E911 Phase II rules. The Commission also extended the filing deadline for filing reports. With this submission to OMB, the Commission is seeking extension (no change in requirements) in order to obtain the full three year clearance.

OMB Control No.: 3060–0975.

Title: Promotion of Competitive Networks in Local Telecommunications Markets Multiple Environments (47 CFR Parts 1, 64 and 68).

Form No: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal government, and state, local or tribal government.

Number of Respondents: 6,421.

Estimated Time Per Response: .5–120 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 623,910 hours.

Total Annual Cost: $5,256,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: This collection involves information regarding the location of demarcation points, antennas placed on subscriber premises, and the state of the market. This information will be used to foster competition in local telecommunications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments. With this submission to OMB, the Commission is seeking extension (no change in requirements) in order to obtain the full three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19895 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 26, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 760.

Estimated Time per Response: 7 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 5,320 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The annual Price Survey is used to collect the data needed to prepare this report.

OMB Control Number: 3060–XXXX.

Title: Section 15.240, Radio Frequency Identification Equipment.

Form Number: N/A.

Respondents: Not-for-profit institutions; Business or other for-profit entities; and State, Local, or Tribal Governments.

Number of Respondents: 10.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 200 hours.

Total Estimated Annual Cost: $3,000.

Privacy Act Impact Assessment: No Impact(s).

Needs and Uses: On April 15, 2004, the FCC adopted a *Third Report and Order*, In the Matter of Review of Part 15 and other Parts of the Commission's Rules, ET Docket No. 01–278, RM–9375, RM–10051, FCC 04–98, *see* 69 FR 29459 (May 24, 2004). The *Third Report and Order* requires each grantee of certification for Radio Frequency Identification (RFID) Equipment to register the location of the equipment/devices it markets with the Commission. The information the grantee must supply to the Commission when registering the devices shall include the name, address and other pertinent contact information of users, the geographic coordinates of the operating location, and the FCC identification number(s) of the equipment. The improved RFID equipment can benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified and by allowing a determination of whether tampering with their contents has occurred during shipping.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19949 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 25, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0633.

Title: Station Licenses—Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965, 74.1265.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,875.

Estimated Time per Response: 0.083 hours (5 minutes).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 488 hours.

Total Annual Cost: $84,140.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees of broadcast stations are required to post, file or have available a copy of the instrument of authorization at the station and/or transmitter site. The FCC and the public use the information posted at the transmitter site to know to whom the transmitter is licensed, which ensures that the station is licensed and operating in the manner specified by the license.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19952 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 25, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0975.

Title: Promotion of Competitive Networks in Local Telecommunications Markets Multiple Environments (47 CFR Parts 1, 64 and 68).

Form No: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal government, and state, local or tribal government.

Number of Respondents: 6,421.

Estimated Time Per Response: .5—120 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 571,350 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: This collection involves information regarding the location of demarcation points, antennas placed on subscriber premises, and the state of the market. This information will be used to foster competition in local telecommunications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments. With this submission to OMB, the Commission is seeking revision due to elimination of the NPRM requirement, which is no longer in effect. The NPRM measured data that was used to guide the Commission as it continues to evaluate and monitor the need for non-discriminatory access requirements for Multiple Tenant Environments (MTEs). This data informed us of the state of the market for the provision of telecommunications services to MTEs, was measured mid-year 2001. This requirement has been eliminated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19953 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–1493]

Wireless Telecommunications Bureau Announces Licensing and Interim Link Registration Process, Including Start Date for Filing Applications for Non-Exclusive Licenses in the 71–76 GHz, 81–86 GHz, and 92–95 GHz

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Wireless Telecommunications Bureau (''WTB'' or ''Bureau'') published a Notice in the **Federal Register** of July 14, 2004, announcing the details of the licensing and link registration process for the 71–76, 81–86, 92–94, and 94.1–95 GHz bands. This document corrects and updates information contained in the July 14, 2004, Notice to provide correct information to the public and avoid confusion.

FOR FURTHER INFORMATION CONTACT: Cheryl Black or Stephen Buenzow, 717–338–2687.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 2004, FR Doc. 04–15870, correct the following pages to read:

- On page 42169, third column under the caption ''How to File Individual Link Registrations under the Interim Process,'' remove sentences 5 and 6; and after sentence 7, insert the following sentences to read: ''Upon initiating electronic filing by entering their FRN and password, licensees will be presented with a list of call signs

assigned to their FRN. Licensees should click on the non-exclusive nationwide (MM radio service) call sign under which they intend to register links, and then click on the link labeled ''Register Links''. Licensees should then click on the link labeled ''Add New Link'', clicking on this link will step through the filing process for registering a new link. This process must be repeated for each link that is registered.''

• On page 42170, third column, under the caption ''Modifications and Amendments to Link Registrations,'' remove the paragraph after footnote reference number 17 and insert the following paragraph to read: ''Licensees must electronically file FCC Form 601 Main Form and Schedule M to modify the technical data on an individual link registration. Upon initiating electronic filing by entering their FRN and password, licensees will be presented with a list of call signs assigned to their FRN. Licensees should click on the non-exclusive nationwide (MM radio service) call sign containing the link they wish to modify, and then click on the link labeled ''Register Links''. Licensees will then be presented with a list of links associated with that license. Links can be modified by clicking on the desired link. This process must be repeated for each link that is modified. To amend the technical data on an individual link registration which has not yet been approved, licensees will be required to file FCC Form 601 Main Form and Schedule M. Upon initiating electronic filing by entering their FRN and password, licensees will be presented with a list of call signs assigned to their FRN. Licensees should click on the link labeled ''My Applications'' and then click on the link labeled ''Pending'' to display a list of applications which can be amended. An application can be amended by clicking on the file number of the desired application and then clicking on the link labeled ''Update.'' Under electronic filing, the previously entered data from FCC Form 601 Schedule M will be displayed and the licensee will be allowed to change the date. This process must be repeated for each link that is amended.''

• On page 42171, second column, remove the *Notice* paragraph at the end of Section IV, ''Filing and Regulatory Fees'' and insert the following paragraph to read: ''*Notice: New fee rates will be effective August 10, 2004. For filings on or after August 10, 2004, applicants and licensees must check the Wireless Telecommunications Bureau Fee Guide for the current fees.*[21]''

Federal Communications Commission.

Joel Taubenblatt,

Chief, Broadband Division.

[FR Doc. 04–19893 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons of the second meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 29, 2003. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Thursday, September 23, 2004, beginning at 10 a.m. and concluding at 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, the Designated Federal Officer (DFO) at (202) 418–1096 or *Jeffery.Goldthorp@fcc.gov*. The TTY number is: (202) 418–2989.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide recommendations to the FCC and to the communications industry that, if implemented, shall under all reasonably foreseeable circumstances assure optimal reliability and interoperability of wireless, wireline, satellite, cable, and public data networks. At its second meeting the Council will present a report recommending the properties for future emergency communications networks. The Council will also report on its analysis of network outages related to 911/E911.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail (*Jeffery.Goldthorp@fcc.gov*) or U.S. mail (7–A325, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/realaudio/*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19954 Filed 8–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via email at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010099–041.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk Sealand; ANL Container Line Pty Ltd.; Limited; American President Lines, Ltd.; APL Co. PTE Ltd.; APL Limited; Atlantic Container Line AB; Australia-New Zealand Direct Line; Canada Maritime Limited; Cast Line Limited; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sud-Americana de Vapores S.A.; Contship Containerlines; Cosco Container Lines Company Limited; CP Ships; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation, Ltd.; Hamburg-Sud; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Hyundai Merchant Marine Co., Ltd.; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Limited, LLC; Malaysian International Shipping Company; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Orient Overseas Container Line, Limited; Pacific International Lines (PTE) Ltd.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Safmarine Container Line N.V.; Senator Lines GmbH; TMM Lines Limited, LLC; United Arab Shipping Company; Yang Ming Transport Marine Corp.; Wan Hai Lines Ltd.; Zim Integrated Shipping Services Ltd. Ltd.

Filing Party: John Longstreth, Esq.; Preston Gates Ellis & Rouvelas Meeds

LLP; 1735 New York Avenue, Suite 500; Washington, DC 20006–5209.

Synopsis: The amendment reflects name changes for Zim Israel Navigation Co., Ltd. to Zim Integrated Shipping Services Ltd and for Italia di Navigazione, S.p.A to Italia di Navigazione, LLC.

Agreement No.: 011889.

Title: HMM/SINOLINES Space Charter Agreement.

Parties: Hyundai Merchant Marine Co., Ltd. (''HMM'') and SINOLINES Container Lines Co., Ltd. (''SINOLINES'').

Filing Party: Eliot J. Halperin, Esq.; Manelli Denison & Selter PLLC; 2000 M Street, NW., 7th floor; Washington, DC 20036–3307.

Synopsis: The proposed agreement would authorize SINOLINES to take space on HMM's vessels operating between China, Hong Kong, Taiwan, and Korea, on the one hand, and the U.S. West Coast, on the other hand. The parties request expedited review.

By order of the Federal Maritime Commission.

Dated: August 26, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–19881 Filed 8–31–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address
016256N	Exim Services, Inc., 13952 Bora Bora Way, F–314, Marina Del Rey, CA 90292.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 04–19975 Filed 8–31–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
014263N	Jet Box Cargo, Inc., dba JBC International Logistic System, 2011 NW. 79th Avenue, Miami, FL 33122.	July 15, 2004.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 04–19974 Filed 8–31–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Tradewinds International LLC, 330 Broadway, Hillsdale, NJ 07642. *Officers:* Kevin Sinnott, Vice President (Qualifying Individual), John Fornazor, President.

All-In Freight Int'l Inc., 167–10 South Conduit Ave., Rm. 207, Jamaica, NY 11434. *Officer:* Jay Lee, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Air Parcel Express, Inc. AKN by APX, Air Parcel Express, Inc., 8201 NW 66th Street, Miami, FL 33166. *Officers:* Andres R. Guerra-Mondragon, President (Qualifying Individual), Virginie Guerra-Mondragon, Secretary.

Cap Worldwide, Inc., 3214 Igloo, Building 7, Suite 200, Houston, TX 77032. *Officers:* Monica J. Wiley, Vice President (Qualifying Individual), Gale Dendinger, President.

Master Air Corp., 3559 NW 82nd Avenue, Miami, FL 33122. *Officer:* Andres Gutierrez, President, (Qualifying Individual).

SNS Shipping, Inc., 147–04 176th Street, Jamaica, NY 11434. *Officer:* In Ja Cho, President (Qualifying Individual).

Quisqueya Cargo Express, Inc., 48–12 104 Street, Corona, NY 11368. *Officer:* Placido Delgado, President (Qualifying Individual).

Accel Product Company dba Accel International, 8219 Zionsville Road, Indianapolis, IN 46268. *Officers:* Celia Yi, President (Qualifying Individual), Connie Yi, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

La Primavera Cargo Express Corp., 1388–92 Jesup Avenue, Bronx, NY 10452. *Officer:* Luis L. Garcia, President (Qualifying Individual).

Bergen Logistics LLC, 330 Broadway, Hillsdale, NJ 07642. *Officers:* Kevin Sinnott, Vice President (Qualifying Individual), John Fornazor, President.

Dated: August 27, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–19973 Filed 8–31–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans	#	Acquired	Entities
Transactions Granted Early Termination—08/03/2004			
20041182	Tektronix, Inc	Inet Technologies, Inc	Inet Technologies, Inc.
Transactions Granted Early Termination—08/04/2004			
20041139	Holcim Ltd	Holcim Ltd	Holcim (Texas) L.P.
20041199	Verizon Communications, Inc	Allen Salmasi	Nextwave Personal Communications Inc.
Transactions Granted Early Temrination—08/05/2004			
20041179	Dover Corporation	Corning Incorporated	Corning Frequency Control Inc., Corning Frequency Control, Ltd., Corning Frequency Control (Shanghai) Co., Ltd.
20041193	IMCO Recycling Inc	Commonwealth Industries, Inc	Commonwealth Industries, Inc.
20041196	Bank of America Corporation	National City Corporation	National Processing, Inc.
Transactions Granted Early Termination—08/06/2004			
200541172	Wachovia Corporation	South Trust Corporation	South Trust Corporation
20041191	THLFS Wenco, Inc	N.E.W. Customer Service Companies, Inc.	N.E.W. Customer Service Companies, Inc.
20041203	La Quinta Corporation	The Marcus Corporation	Baymont Franchises International, LLC, Baymont Inns Hospitality LLC, Baymont Inns, Inc., Baymont Partners, LLC, Beck/Marcus Associates-Miami Airport, Cutler Ridge Associates, LMC Associates-Rockside, Marcus-Anderson-Guastello Partnership, Marcus-Anderson Partnership, Marcus Consid, LLC, Marcus Fl, LLC, Marcus Non, LLC, Mark Antell Partnership, Willowbrook Motel Limited Partnership, Woodfield Suites Franchises International, Inc. Woodfield Suites Hospitality Corporation, Woodfield Suites, Inc.
20041207	Unifi	Koch Industries, Inc	Invista, S.a.r.l.
20041213	Mrs. Antonia Ax:son Johnson	The Trust under the Will of Walter L. Sams.	Central Coca-Cola Bottling Company, Inc.
20041214	William L. Sauder	Crown Pacific Limited Partnership (Debtor-in-Possession).	Crown Pacific Limited Partnership (Debtor-in-Possession—
20041215	Wells Fargo & Company	Century Park Capital Partners, L.P	Becker-Underwood, Inc.
20041220	Dominion Resources, Inc	Multitrade of Pittsylvania County, L.P	Multitrade of Pittsylvania County, L.P.
20041221	Blackstone FCH Capital Partners IV L.P.	Morgan Stanley Dean Witter Capital Partners IV, L.P..	Vanguard Health Systems, Inc.
20041226	Whitney V, L.P	YUM! Brands, Inc	Tricon Restaurants International (PR), Inc.
20041232	The DirectTV Group, Inc	PST Holdings, Inc. (debtor-in-possession).	PST Holdings, Inc.
Transactions Granted Early Termination—08/09/2004			
20041145	Apollo Investment Fund V, L.P	Whitehall Associates, L.P	Borden Chemical, Inc., Borden Holdings, Inc.
20041190	Kelso Investment Associates V, L.P	Vernalis plc	Vernalis plc
20041195	Stryker Corporation	SpineCore, Inc	SpineCore, Inc.

Trans	#	Acquired	Entities
20041227	Audax Private Equity Fund, L.P	Vitaquest International, Inc	Vitaquest International, Inc.
Transactions Granted Early Termination—08/10/2004			
20040195	Cephalon, Inc.	CIMA Labs Inc	CIMA Labs Inc.
Transactions Granted Early Termination—08/11/2004			
20041209	BH/RE, L.L.C	Aladdin Gaming, LLC	Aladdin Gaming, LLC
Transactions Granted Early Termination—08/12/2004			
20041210	Arsenal Capital Partners Qualified Purchaser Fund LP.	The Berwind Company LLC	Priority Air Express, LLC

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant, *Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.*

By direction of the Commission.

Donald S. Clarke,

Secretary.

[FR Doc. 04–19967 Filed 8–31–04; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 032 3040]

Applied Card Systems, 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 September 24, 2004.

ADDRESSES: Comments should refer to ''Applied Card Systems, Inc., *et al.*, File No. 032 3040,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Gray or Barbara Bolton, FTC Southeast Regional Office, 225 Peachtree Street, NE., Suite 1500, Atlanta, GA 30303, (404) 656–1350 or 656–1362.

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 August 25, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/08/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 September 24, 2004. Comments should refer to ''Applied Card Systems, Inc., *et al.*, File No. 032 3040,'' 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 *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc. (collectively ''respondents'' or ''ACS'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After the public comment period, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the debt collection practices of ACS in attempting to collect delinquent debt owed or allegedly owed to its affiliate, Cross Country Bank (''CCB''). The complaint alleges that respondents used unfair debt collection practices in violation of Section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45. The proposed complaint alleges two counts regarding ACS's debt collection practices. First, the complaint alleges that ACS has repeatedly called non-debtor third parties in an attempt to either speak with a CCB cardholder or get location information about a cardholder, after the third parties have informed ACS that they do not know the cardholder or that the cardholder does not live at their residence. ACS makes these repeated calls without a reasonable belief that the third parties now have correct or complete information about CCB's cardholders. Second, the complaint alleges that ACS has engaged in conduct purposely designed to harass third parties at the number called.

The proposed consent order tracks the complaint and contains injunctive provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed order contains two injunctive provisions. The first prohibits respondents from communicating with any third party, for the purpose of acquiring cardholder location information, more than once without a request by the third party for subsequent calls or a reasonable belief that the third party has complete or correct location information for the debtor. The second injunctive provision of Part I prohibits respondents from engaging in abusive conduct such as continued calls and the use of abusive language.

Part II of the proposed order contains a broad fencing-in provision that pertains to all consumers. Among other things, it bars respondents from (i) Placing collection calls after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time of the person called; (ii) placing calls to a consumer's place of employment if they have reason to know that such calls are employer-prohibited; (iii) using false, deceptive, or misleading representations in collection calls; (iv) collecting amounts from consumers that are not legally due; and (v) applying payments received to those accounts except as designated by consumers.

Part III of the proposed order requires the respondents to distribute copies of the order to certain company officials and employees. Parts IV through VI of the proposed order are monitoring, record keeping, and compliance provisions. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–19968 Filed 8–31–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: 2004–2006 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC). In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on June 30, 2004 and allowed 60 Days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 1, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room 5202, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia McMichael, AHRQ Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

2004–2006 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC).

The MEPS–IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997 for the calendar year 1996.

The survey has since been conducted annually for calendar years 1997 through 2003. AHRQ proposes to continue this annual survey of establishments for calendar years 2004 through 2006. The survey data for calendar year 2004 will be collected in 2005. Likewise, calendar year 2005 data will be collected in 2006 and calendar year 2006 data in 2007. The survey will collect information from both public and private employers.

This survey will be conducted for AHRQ by the Bureau of the Census using a sample comprised of:

1. An annual sample of employers selected from Census Bureau lists of private sector employers and governments (Known as the List Sample), and

2. An every fourth year sample of employers identified by respondents to the MEPS–Household Component (MEPS–IC) for the same calendar year (known as the Household Sample). The MEPS–HC is an annual housheld survey designed to collect information concerning health care expenditures and related data for individuals. This sample is next scheduled to be collected for the 2006 survey year.

Data to be collected from each employer will include a description of the business (*e.g.,* size, industry) and descriptions of health insurance plans

available, plan enrollments, total plan costs and costs to employees.

Data Confidentiality Provisions

MEPS–IC List Sample data confidentiality is protected under the U.S. Census Bureau confidentiality statute, Section 9 of Title 13, United States Code. MEPS–IC Household Sample data confidentiality is protected under Sections 308(d) and 924(c) of the Public Health Service Act (42 U.S.C. 242m and 42 U.S.C.299c–3(c)).

Section 308(d), the confidentiality statute of the National Center for Health Statistics, is applicable because the MEPS–HC sample is derived from respondents of an earlier NCHS survey. Section 924(c), the confidentiality statute of AHRQ, applies to all data collected for research that is supported by AHRQ. All data products listed below must fully comply with the data confidentiality statute under which the raw data was collected as well as any additional confidentiality provisions that apply.

Data Products

Data will be produced in three forms: (1) Files derived from the Household Sample, which can be linked back to other information from household respondents in the MEPS–HC, will be available to researchers at the AHRQ Research Data Center; (2) files containing employer information from the List Sample will be available for use by researchers at the Census Bureau's Research Data Centers; and (3) a large compendium of tables of estimates, also based on List Sample data, will be produced and made available on the AHRQ website. These tables will contain descriptive, but non-identifiable statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and establishment characteristics, such as, age, profit/nonprofit status and union/non-union.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health insurance offerings;
- Producing estimates to support the Bureau of Economic Analysis and the Center for Medicare and Medicaid Services in their production of health care expenditure estimates for the National Health Accounts and the Gross Domestic Product;
- Producing national and State estimates of spending on employer-sponsored health insurance to study the results of national and State health care policies;
- Supplying data for modeling the demand for health insurance; and
- Providing data on health plan choices, costs, and benefits that can be linked back to households' use of health care resources in the MEPS–HC for studies of the consumer health insurance selection process.

These data provide the basis for researchers to address important questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone. This contact will provide information on the availability of health insurance from that employer and essential persons to contact. Based upon this information, Census will mail a questionnaire to the employer. In order to assure high response rates, Census will follow-up with a second mailing after an interval of approximately 30 working days, followed by a telephone call to collect data from those who have not responded by mail.

As part of this process, for larger respondents with high burdens, such as State employers and very large firms, we will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats and use of special forms.

Estimated Annual Respondent Burden

Survey years	Annual number of respondents	Estimated time per respondent in hours	Estimated total annual burden hours	Estimated annual cost to the government
2004	34,507	.6	19,708	$8,800,000
2005	34,507	.6	19,708	9,138,000
2006	39,791	.6	23,550	10,660,000

Request for Comments: In accordance with the above cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of the burden (including hours and costs) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 6, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–19897 Filed 8–31–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity for Businesses To Partner With NIOSH To Incorporate Electronic Sensors Into Respirator Filter Cartridges; Correction

In the notice document appearing on page 48498 in the **Federal Register** Vol. 69, No. 153, Tuesday, August 10, 2004, make the following correction:

On page 48498 under the **DATES** heading, it should read: Submit letters of interest within 30 days after the date of publication of this correction notice in the **Federal Register**. Also, on this same page under the heading **ADDRESSES**

should read: Interested manufacturers should submit a letter of interest with information about their capabilities to the following e-mail address: *esli@cdc.gov.*

On page 48499 under the heading **FOR FURTHER INFORMATION CONTACT** change to read: *esli@cdc.gov.*

Dated: August 25, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–19931 Filed 8–31–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Times and Dates: 9 a.m.–4 p.m., October 7–8, 2004.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its final meeting of the 2004 calendar year cycle on Thursday and Friday, October 7–8, 2004. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include:

Diabetic peripheral neuropathy, diabetic retinopathy and diabetic macular edema.

Renal failure, continued.

At-risk for perioperative myocardial ischemia.

Mechanical complication of joint prosthesis.

Metabolic disorders.

Refractory anemia.

Insomnia and hypersomnia.

ICD–10–Procedure Classification System (PCS)—Update.

Revision of hip replacement.

Revision of knee replacement.

Sublingual Capnometry.

Implantation of prosthetic cardiac support device.

Multiple vessel drug-eluting stent.

Revision of CRT–D pocket.

Insertion of rechargeable neurostimulator pulse generator.

Infusion of liquid radioisotope for treatment of malignant brain tumor.

Addenda.

Contact Person for Additional Information: Amy Blum, Medical Classification Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone 301–458–4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland, 21244, telephone 410–786–1542 (procedures).

Notice: In the interest of security, CMS has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Because of increased security requirements, those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the October 7–8, 2004 meeting must submit their name and organization by October 4, 2004 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Send your name and organization to one of the following by October 4, 2004 in order to attend the October 7–8, 2004 meeting: Pat Brooks, *pbrooks1@cms.hhs.gov*, 410–786–5318. Ann Fagan, *afagan@cms.hhs.gov*, 410–786–5662. Amy Gruber, *agruber@cms.hhs.gov*, 410–786–1542.

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 25, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19945 Filed 8–31–04; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0455]

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). This training program was initiated in 1999, and it is intended to give CDER regulatory project managers an opportunity to tour pharmaceutical facilities and to exchange regulatory experiences with their industry counterparts. The Site Tours Program is intended to enhance review efficiency and quality by providing CDER staff with a better understanding of the pharmaceutical industry and its operations. Further, this program is intended to improve communication and cooperation between CDER staff and industry. The purpose of this notice is to invite pharmaceutical companies interested in participating in these programs to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas to the agency by November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Beth Duvall-Miller, Office of New Drugs (HFD–020), Center for Drug Evaluation and Research, Food and Drug Administration, 5515 Security Lane, rm. 7219, Rockville, MD 20852, 301–594–3937, FAX: 301–480–8329.

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, the center has initiated various training and development programs to promote high performance

in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing this training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide the following: (1) First hand exposure to industry's drug development processes, and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. Regulatory Project Management Site Tours and Regulatory Interaction Program

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, project tracking mechanisms, and regulatory submission operations.

The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER, therefore, selection will be based on the availability of funds and resources for each fiscal year.

Firms interested in offering a site tour or learning more about this training opportunity should respond within 60 days of this notice by submitting a proposed agenda to Beth Duvall-Miller (see **FOR FURTHER INFORMATION CONTACT**).

Dated: August 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19879 Filed 8–31–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection: Request for Public Comment: 30-Day Notice

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 30-day proposed information collection: IHS Urban Indian Health Program Common Reporting Requirements.

SUMMARY: The Indian Health Service, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval. The IHS received no comments in response to the 60-day **Federal Register** notice (FR 04–8721) published on 4/19/04. The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection

Title: 0917–0007, ''IHS Urban Indian Health Program Common Reporting Requirements.''

Type of Information Collection Request: Extension of a currently approved information collection.

Form Number: The report formats are contained in IHS instruction manual, ''Urban Indian Health Programs Common Reporting Requirements.'' The reporting formats have been computerized for electronic data submission.

Need and Use of Information Collection: IHS contracts with urban Indian organizations to: access and identify health services available to urban Indians; provide health education and health services to urban Indians; identify the unmet health needs of urban Indians; and, make recommendations on methods to improve health services provided to urban Indians. The information is collected annually and used to: monitor contractor performance; prepare budget reports; allocate resources; and, access and evaluate the urban Indian health contract programs.

Affected Public: Individuals or households, not-for-profit institutions, and State, Local or Tribal Government.

Type of Respondents: Urban Indian Health care organizations.

The table below provides the following: types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hours per response, and total annual burden hours.

Data collection instruments	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hrs per response*	Total annual burden hrs
Face Sheet	34	1	34	0.50 (30 mins)	17.0
Table 1	34	1	34	2.00 (120 mins)	68.0
Table 2	34	1	34	0.75 (45 mins)	25.5
Table 3	34	1	34	2.25 (135 mins)	76.5
Table 3A	34	1	34	1.05 (65 mins)	36.0
Table 3B	34	1	34	0.25 (15 mins)	8.5
Table 3C	34	1	34	0.33 (20 mins)	11.0
Table 3D	34	1	34	1.25 (75 mins)	42.5
Table 4	(**)	1		0.50 (30 mins)	17.0

Data collection instruments	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hrs per response*	Total annual burden hrs
Table 5	34	1	34	2.00 (120 mins)	68.0
Table 6	34	1	34	2.00 (120 mins)	68.0
Table 7	34	1	34	1.00 (60 mins)	34.0
Table 8	34	1	34	1.25 (75 mins)	42.5
Total	408	14	408	15.13 (910 mins)	514.5

* For ease of understanding, burden hours are also provided in actual minutes.
** Excludes Urban Indian Health projects with no medical component.

There are no Capital Costs, Operating Costs and/or Maintenance Costs required for this collection of information.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, directly to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Allison Eydt, Desk Officer for IHS.

Send requests for more information on the proposed collection or to obtain a copy of the data collection instrument(s) and instructions to: Ms. Christina Ingersoll, IHS Reports Clearance Office, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *cingerso@hqe.ihs.gov.*

For further information directly pertaining to the proposed data collection instruments and/or the process, please contact Karen Boyle, Reyes Building, 801 Thompson Avenue, Suite 200, Rockville, MD 20852–1627, Telephone (301) 443–4680.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 6, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–19880 Filed 8–31–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–04–115]

Notice, Request for Comments; Letter of Recommendation, Keyspan LNG Facility Providence, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port (COTP) Providence is preparing a letter of recommendation as to the suitability of the Narragansett Bay waterways for liquefied natural gas (LNG) marine traffic. The letter of recommendation is in response to a Letter of Intent to modify the Keyspan LNG facility Providence, Rhode Island, to accept shipments of LNG by water. The COTP Providence is seeking comments and related material pertaining specifically to the maritime operation and waterways management aspects of the proposed LNG facility modifications. In preparation for issuance of the letter of recommendation, the COTP Providence will consider comments received from the public, as well as information submitted by the owner or operator under the requirements of 33 CFR 127.007. Specific items suitable for comment are listed later in this notice under *Background and Purpose*.

DATES: Comments and related material must reach the Coast Guard on or before November 1, 2004.

ADDRESSES: The Commanding Officer, U.S. Coast Guard Marine Safety Office Providence maintains the public docket for this notice. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. You may submit comments and related material by:

1. Mail or delivery to Commanding Officer, U.S. Coast Guard Marine Safety Office, 20 Risho Avenue, East Providence, RI 02914–1208.
2. Fax to (401) 435–2399.
3. Electronically via e-mail at *Elambie@msoprov.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Ms. Erin G. Lambie at Coast Guard Marine Safety Office Providence, RI, 401–435–2355. For assistance using the FERC internet Web site we reference, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material pertaining specifically to the maritime operation and waterways management aspects of the proposed modification to the existing LNG facility. If you do so, please include your name and address, identify the docket number for this notice (CGD01–04–115), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means, as described in **ADDRESSES**, but please submit your comments and material by only one means. If you submit them by mail or hand delivery, please submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached

U.S. Coast Guard Marine Safety Office Providence, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The recommendation made by this office may be affected by comments received.

Public Meeting

We do not now plan to hold a public meeting solely for the preparation of a Letter of Recommendation, but you may submit a request for one to U.S. Coast Guard Marine Safety Office Providence at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid the recommendation process, we will hold one or more at a time and place announced by a later notice in the **Federal Register**. We will be participating as a cooperating agency in public meetings sponsored by the Federal Energy Regulatory Commission (FERC), as outlined in the next paragraph.

The FERC is the lead Federal agency responsible for authorizing the siting and construction of onshore LNG facilities under section 3 of the Natural Gas Act (NGA) (15 U.S.C. 717 *et seq*). FERC also authorizes the construction and operation of interstate natural gas pipelines that may be associated with LNG facilities under section 7 of the NGA. The FERC conducts environmental, safety, and security reviews of LNG plants and related pipeline facilities, and as the lead Federal agency prepared the overall National Environmental Policy Act (NEPA) documentation (18 CFR part 380). As required by NEPA, FERC is developing a draft Environmental Impact Statement (EIS). Publication of the Keyspan LNG EIS will be announced in the **Federal Register**. The FERC intends to hold two public meetings the details of which will also be published in the **Federal Register**. In addition to comments received on the draft EIS, comments received at these public meetings, which are related specifically to maritime operation and waterways management issues surrounding the proposed modifications to the existing LNG facility, will be considered by the Coast Guard in the Letter of Recommendation process.

Background and Purpose

Although FERC is the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, the Coast Guard is responsible for navigation safety issues related to LNG ship deliveries. The FERC authorization process and the Coast Guard Letter of Recommendation process are two separate and distinct processes, although related in that they both pertain to the Keyspan LNG proposal. In accordance with the requirements of 33 CFR 127.009, the U.S. Coast Guard COTP Providence is preparing a Letter of Recommendation as to the suitability of Narragansett Bay and the Providence River to accommodate LNG marine traffic. The Letter of Recommendation is in response to a Letter of Intent submitted on August 20, 2004, by Keyspan LNG, L.P. (Keyspan LNG), in accordance with 33 CFR 127.007 to modify the operation of the Keyspan LNG facility in Providence, RI to receive shipments of liquefied natural gas via the water.

The modifications to the Keyspan LNG facility would allow for the transportation of up to 800 million cubic feet per day (MMcfd) of imported natural gas to the U.S. market. The proposed LNG terminal would include the construction of a ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 145,000 cubic meters (m^3) of liquefied natural gas. The Coast Guard COTP Providence's Letter of Recommendation will address the suitability of Narragansett Bay and the Providence River to accommodate LNG vessels with a capacity of up to 145,000 cubic meters. Specifically, the Letter of Recommendation will address the suitability of the waterway for LNG marine traffic based on:

- The physical location of the facility.
- A description of the facility.
- The LNG vessels' characteristics and the frequency of LNG shipments to or from the facility.
- Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility, within 25 kilometers of the facility.
- Density and character of marine traffic in the waterway.
- Locks, bridges, or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Protection from the high seas.
- Natural hazards, including reefs, rocks, and sandbars.
- Underwater pipelines and cables.
- Distance of berthed vessel from the channel, and the width of the channel.

As stated above, the Letter of Recommendation process is independent of and separate from, although related to, the Federal permitting process for which FERC is the lead agency. Any permit that may be issued by FERC will require, as a condition of final approval, that the Keyspan facility obtain a Letter of Recommendation from the U.S. Coast Guard Captain of the Port Providence.

Additional Information

Additional information about the Keyspan LNG project is available from FERC's Office of External Affairs at 1–866–208–FERC or on the FERC internet web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, then click on ''General Search'' and enter FERC's docket number excluding the last three digits in the Docket Number field (*i.e.*, CP04–223). For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

Dated: August 25, 2004.

M.E. Landry,

Captain, U.S. Coast Guard, Captain of the Port, Providence.

[FR Doc. 04–19961 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–04–093]

Notice, Request for Comments; Letter of Recommendation, LNG Facility Weavers Cove, Fall River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port (COTP) Providence is preparing a letter of recommendation as to the suitability of the Narragansett Bay waterways for liquefied natural gas (LNG) marine traffic. The letter of recommendation is in response to a Letter of Intent to operate a LNG facility at Weavers Cove, Fall River, Massachusetts. The COTP Providence is seeking comments and related material pertaining specifically to the maritime operation and waterways management aspects of the proposed LNG facility. In preparation for issuance of the letter of recommendation, the COTP Providence will consider comments received from the public, as well as information submitted by the owner or operator under the requirements of 33 CFR 127.007. Specific items suitable for comment are listed later in this notice under *Background and Purpose.*

DATES: Comments and related material must reach the Coast Guard on or before November 1, 2004.

ADDRESSES: The Commanding Officer, U.S. Coast Guard Marine Safety Office Providence maintains the public docket for this notice. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. You may submit comments and related material by:

(1) Mail or delivery to Commanding Officer, U.S. Coast Guard Marine Safety Office, 20 Risho Avenue, East Providence, RI, 02914–1208.

(2) Fax to (401) 435–2399

(3) Electronically via e-mail at *EleBlanc@msoprov.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Edward G. LeBlanc at Coast Guard Marine Safety Office Providence, RI, (401) 435–2351. For assistance using the FERC internet Web site we reference, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material pertaining specifically to the maritime operation and waterways management aspects of the proposed LNG facility. If you do so, please include your name and address, identify the docket number for this notice (CGD01–04–093), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means, as described in **ADDRESSES**, but please submit your comments and material by only one means.

If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached U.S. Coast Guard Marine Safety Office Providence, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The recommendation made by this office may be affected by comments received.

Public Meeting

We do not now plan to hold a public meeting solely for the preparation of a Letter of Recommendation, but you may submit a request for one to U.S. Coast Guard Marine Safety Office Providence at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid the recommendation process, we will hold one or more at a time and place announced by a later notice in the **Federal Register**. We will be participating as a cooperating agency in public meetings sponsored by the Federal Energy Regulatory Commission (FERC), as outlined in the next paragraph.

The FERC is the lead Federal agency responsible for authorizing the siting and construction of onshore LNG facilities under Section 3 of the Natural Gas Act (NGA) (15 U.S.C. 717 *et seq*). FERC also authorizes the construction and operation of interstate natural gas pipelines that may be associated with LNG facilities under section 7 of the NGA. The FERC conducts environmental, safety, and security reviews of LNG plants and related pipeline facilities, and as the lead Federal agency prepared the overall National Environmental Policy Act (NEPA) documentation (18 CFR part 380). As required by NEPA, FERC issued a draft Environmental Impact Statement (EIS) in August 2004 (FERC/EIS–0169D). Publication of the Weaver's Cove LNG draft EIS was announced on pages 47920 to 47921 of **Federal Register** Volume 69, No. 151, dated Friday, August 6, 2004. As stated in that announcement, FERC intends to hold two public meetings. The location and times for these meetings are listed below:

September 8, 2004, 7 p.m. (e.s.t.): Venus de Milo Restaurant, 75 GAR Highway, Swansea, MA 02777, (508) 678–3901.

September 9, 2004, 7 p.m. (e.s.t.): Gaudet Middle School, 1113 Aquidneck Avenue, Middletown, RI 02842, (401) 846–6395.

These meetings are also posted on FERC's calendar at *http://www.ferc.gov/EventCalendar/Eventslist.aspx* along with other related material. Comments received at these public meetings, which are related specifically to maritime operation and waterways management issues surrounding the proposed LNG facility, will be considered by the Coast Guard in the Letter of Recommendation process.

Background and Purpose

Although FERC is the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, the Coast Guard is responsible for navigation safety issues related to LNG ship deliveries. The FERC authorization process and the Coast Guard Letter of Recommendation process are two separate and distinct processes, although related in that they both pertain to the Weaver's Cove Energy LNG proposal. In accordance with the requirements of 33 CFR 127.009, the U.S. Coast Guard COTP Providence is preparing a Letter of Recommendation as to the suitability of Narragansett Bay and the Taunton River to accommodate LNG marine traffic. The Letter of Recommendation is in response to a Letter of Intent submitted on May 12, 2004, by Weaver's Cove Energy, L.L.C. and Mill River Pipeline, L.L.C. collectively referred to as Weaver's Cove Energy, in accordance with 33 CFR 127.007 to operate a LNG facility at Weaver's Cove, Fall River, MA.

Weaver's Cove Energy's proposed facilities would transport up to 800 million cubic feet per day (MMcfd) of imported natural gas to the U.S. market. The proposed LNG terminal would include a ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 145,000 cubic meters (m^3) of natural gas. The Coast Guard COTP Providence's Letter of Recommendation will address the suitability of Narragansett Bay and the Taunton River to accommodate LNG vessels with a capacity of up to 145,000 cubic meters. Specifically, the Letter of Recommendation will address the suitability of the waterway for LNG marine traffic based on:

- The physical location of the facility.
- A description of the facility.
- The LNG vessels' characteristics and the frequency of LNG shipments to or from the facility.
- Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility, within 25 kilometers of the facility.
- Density and character of marine traffic in the waterways.
- Locks, bridges, or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Protection from the high seas.
- Natural hazards, including reefs, rocks, and sandbars.
- Underwater pipelines and cables.
- Distance of berthed vessel from the channel, and the width of the channel.

As stated above, the Letter of Recommendation process is independent of and separate from, although related to, the Federal permitting process for which FERC is the lead agency. Any permit that may be

issued by FERC will require, as a condition of final approval, that Weaver's Cove Energy obtain a Letter of Recommendation from the U.S. Coast Guard COTP Providence.

Additional Information

Additional information about the Weaver's Cove LNG project is available from FERC's Office of External Affairs at 1–866–208–FERC or on the FERC internet Web site (*http://www.ferc.gov*) using their eLibrary link. Click on the eLibrary link, then click on ''General Search'' and enter FERC's docket number excluding the last three digits in the Docket Number field (*i.e.*, CP04–36). For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

Dated: August 25, 2004.

M. E. Landry,

Captain, U.S. Coast Guard, Captain of the Port, Providence.

[FR Doc. 04–19960 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; 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, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning an evaluation of the National Flood Insurance Program (NFIP) aimed at documenting program's impact on land use, state floodplain development and management capacity, program participation of low-income populations, flood insurance purchase decisions, and NFIP communication strategies.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), created by the National Flood Insurance Act of 1968 (Pub. L. 90–488, as amended) is a federal program that enables property owners in participating communities to purchase insurance as a protection against flood loses in exchange for State and community floodplain management regulations that reduce future flood damages. The Act authorizes studies of flood hazards to provide a basis for appraising NFIP's effect on land-use requirements. This information collection will assess NFIP's effectiveness and efficiency and will identify appropriate alternatives to current operations or opportunities for improvement. Findings will be shared and widely used by program officials, executive branch and congressional committees with oversight responsibility for the NFIP, and other stakeholders.

Collection of Information

Title: Evaluation of the Federal Emergency Management Agency's National Flood Insurance Program (NFIP).

Type of Information Collection: New.

OMB Number: 1660–NEW10.

Abstract: The National Flood Insurance Program (NFIP) will conduct a one-time only comprehensive evaluation of its impact on land-use requirements aimed at reducing loss of life and property due to floods. The study will center around six areas of inquiry translated into 52 evaluative questions through a combination of case studies, in-depth interviews, and surveys applied to an across-the-board representation of NFIP constituencies involving communities, state agencies, mortgage lenders, insurance agents, land developers, and individual and business flood insurance policy and non-policy holders. Data findings will be used by NFIP officials to develop strategies aimed at improving the effectiveness and efficiency of the program.

Affected Public: Individuals and Households, State and Tribal Governments, and Businesses and Other for-Profit Organizations.

Estimated Total Annual Burden Hours: 3,410.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Case Studies	276	1	2.00	552
Surveys	8,575	1	.33	2858
Total	8,851	1	.....	3,410

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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 technolo-gy, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Claudia Murphy, Program Analyst, National Flood Insurance Program at (202) 646–2775 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections@dhs.gov.*

Dated: August 23, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–19792 Filed 8–31–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; 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, 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 a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the need to continue collecting information from state, local, and tribal government officials; businesses; and, individuals residing in the immediate and surrounding areas of chemical stockpile sites.

SUPPLEMENTARY INFORMATION: The Chemical Stockpile Emergency Preparedness Program (CSEPP) is one facet of the multi-hazard readiness program in eight U.S. states that deal with hazardous material spills or releases. The program's goal is to improve preparedness to protect the people of these communities in the unlikely event of an accident. CSEPP, a cooperative effort between FEMA and the U.S. Army, provides funding (grants), training, community outreach, guidance, technical support and expertise to State, local, and tribal governments to improve their capabilities to prepare for and respond to this type of disaster. Since no preparedness program can be successful without the public's understanding and cooperation, input from the residents and businesses of immediate and/or surrounding areas is vital to program managers' ability to design custom-tailored strategies to educate and communicate risks and action plans at the local level. This survey, which was initiated three years ago, will continue as the assessment mechanism to document and quantify program achievements. There are two authorities supporting this information collection: (1) The Government Performance Results Act of 1993 (GPRA), which mandates federal agencies to provide valid and reliable quantification of program achievements, and (2) Executive Order 12862, which requires agencies to survey customers to determine their level of satisfaction with existing services.

Collection of Information

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0057.

Abstract: Consistent with performance measurement requirements set forth by the Government Performance Results Act, the Chemical Stockpile Preparedness Program (CSEPP) will continue collecting data from state, local, and tribal governments; individuals; and, businesses residing in the immediate or surrounding areas of eight chemical stockpile sites. This study will: (1) Assess program effectiveness using five national performance indicators unique to the CSEPP program, (2) measure and monitor customer satisfaction with CSEPP products and services, and (3) identify weaknesses and strengths of individual sites and program components. Data findings will be used to set customer service standards, while providing quantitative benchmarks for program monitoring and evaluation.

Affected Public: State, local, and tribal government officials; individuals; and businesses.

Estimated Total Annual Burden Hours: 1,781 hours.

	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
State/local	176	1	.25	44
Individuals and Businesses	6,945	1	.25	1,737
Total	7,121	1	.25	1,781

Estimated Cost: $29,393.00.

TABLE 2.—ANNUAL COST TO RESPONDENTS

Program	Burden hours	Median hour rate ($)	Average cost per response ($)	Annualized cost all respondents ($)
Open-Ended Questionnaire:				
State/local officials	44	[1] 23.41		1,030.00
Surveys:				
Individuals and Businesses	1,737	[2] 16.32		28,363.00
Grand Total	1,781			29,393.00

[1] National median hourly rate for emergency management-related occupations per Bureau of Labor Statistics (BLS).

[2] Average of median hourly rate for all occupations at state level per BLS: AL=$15.06; KY=$15.15; UT=$15.88; MD=$19.07; IN=$15.90; AR=$13.72; CO=$18.50; OR=$17.09.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Joe Herring, Program Specialist, CSEPP at (202) 646–3987 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections@dhs.gov.*

Dated: August 23, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–19793 Filed 8–31–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; 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, 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA contractors who plan meetings, conferences and seminars, submit a plan or report to FEMA detailing how the minimum accessibility standards for the disabled are being met.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended, prohibits Federal agencies from discriminating against qualified persons on the grounds of disability. The law not only applies to internal employment practices but also extends to agency interaction with members of the public who participate in FEMA programs. (FEMA's implementation of Section 504 of this Act is codified in 44 CFR Part 16.) Contractors who plan meetings, conferences, or seminars for FEMA must develop a plan to ensure that minimum accessibility standards for the disabled as set forth in the contract clause will be met. The plan must be approved by a FEMA Contracting Officer.

Collection of Information:

Title: FEMA Contract Clause—Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0028.

Abstract: Contractors who plan meetings, conferences or seminars for FEMA must submit a plan to the Contracting Officer detailing how the minimum accessibility standards for the disabled set forth in the contract clause will be met.

Affected Public: Business and other for-profit.

Estimated Total Annual Burden Hours: 30 hours. FEMA estimates that a maximum of 10 FEMA contracts will be awarded per year, which may require compliance with this clause. Hour burden response is estimated at 3 hours per respondent. There would be one response per year per contract, using a consolidated plan for multiple meetings under the contract.

Estimated Cost: The annual cost to respondents is estimated to be $1,033 ($34.44 per hour × 3 hours per respondent × 10 responses.) Annual costs to the Federal Government is estimated at $689.00, which includes the cost for reviewing each plan by one Contracting Officer and one Equal Rights Manager ($34.44 per hour × 1 hour per review × 10 plans) × 2).

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Nancy Costello, Contract Specialist, Financial and Acquisitions Management Division, (202) 646–4347 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: August 23, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–19794 Filed 8–31–04; 8:45 am]

BILLING CODE 9110–07–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Amendment No. 5 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 Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

EFFECTIVE DATE: August 24, 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 Florida 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 August 13, 2004:

The counties of Charlotte, Collier, DeSoto, Hardee, Highlands, Lee, Orange, Osceola, Polk, Sarasota, Seminole, and Volusia for Categories C–G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance.)

Flagler County for Individual Assistance (already designated for Categories A and B under the Public Assistance 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. 04–19797 Filed 8–31–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Amendment No. 9 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 Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: 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, Thomas Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Justo Hernandez as Federal Coordinating Officer for this disaster.

(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. 04–19795 Filed 8–31–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1532–DR]

Northern Mariana Islands; 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 Commonwealth of the Northern Mariana Islands (FEMA–1532–DR), dated July 29, 2004, and related determinations.

EFFECTIVE DATE: August 23, 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 Commonwealth of the Northern Mariana Islands 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 July 29, 2004:

The islands of Agrigan, Alamagan, and Pagan 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. 04–19796 Filed 8–31–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–07–1320–241A; ALES 51589]

Notice of Competitive Coal Lease Offering, Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the Flat Creek tract described below in Fayette County, Alabama will be offered for competitive lease sale by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq*).

DATES: The lease sale will be held at 10 a.m., Thursday, September 30, 2004. Each bid must be clearly identified on the outside of the sealed envelope containing the bid. The bid should be sent by certified mail, return receipt or be hand delivered on or before 4:30 p.m., Wednesday, September 29, 2004, to the Bureau of Land Management at the address below.

ADDRESSES: The lease sale will be held at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Sealed bids must be submitted to the Cashier, BLM Eastern States Office, at the address above.

FOR FURTHER INFORMATION CONTACT: Steve Gobat, Deputy State Director, Division of Natural Resources at (703) 440–1727.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by The Pittsburgh and Midway Coal Mining Company (P&M). The Federal coal tract being considered for sale is adjacent to P&M's North River Mine. The coal resources to be offered consist of all the reserves recoverable by underground methods in the following described lands near Berry, Alabama which consists of private surface with Federally-owned coal. The coal tract is described as:

T. 16 S., R. 10 W Fayette County, Alabama, Huntsville Meridian

Sec. 14: SWSW;
Sec. 15: S2SE, NESE, SESW;
Sec. 21: W2NE, NWSE, NESW, SENE, E2SE, SWSE, W2SW, NENE;
Sec. 22: E2SE, S2NW, W2SW, SESW, N2NE, SENE, SWNE, NESW, W2SE, N2NW;
Sec. 23: W2SW, SWSE, NENW, S2NW, NWNW;
Sec. 26: NWNW, S2NE, N2SE;
Sec. 27: S2NE, N2SE, N2NE, NENW, W2NW, SENW, S2NE;
Sec. 28: E2SW, SE, NWSW, E2NE;
Sec. 31: NESE, E2NW, NE;
Sec. 34: NW.

Containing 2,887.2 acres.

The tract is adjacent to both Federal and private coal resources which are both leased and unleased. All of the acreage offered has been determined to be suitable for mining. Numerous oil and gas wells have been drilled in the immediate area of the tract.

Total recoverable reserves are estimated to be 10.789 million tons. The Pratt Seam is a high volatile group C bituminous coal and averages (proximate analysis) 13,000 BTU/lb. with 2.8 percent moisture, 2.1 percent sulfur, 10.0 percent ash, 51.3 percent fixed carbon, and 36.1 percent volatile matter.

The Flat Creek Tract will be leased to the highest qualified bidder provided that the high bid equals or exceeds the Fair Market Value (FMV) for the tract as determined by the Authorized Officer. The U.S. Department of Interior has established a minimum bid of $100 per acre or fraction thereof for the tract. The minimum bid does not represent the amount for which the tract may actually be issued, since FMV will be determined in a separate post sale analysis. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4:30 p.m., Wednesday, September 29, 2004, will not be considered.

Any lease issued as a result of this offering will require an annual rental payment of $3 per acre and a royalty payable to the United States of 8 percent of the value of the coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR part 206. Bidding instructions and bidder qualifications are included in the Detailed Statement for the tract offered. The terms and conditions of the proposed coal lease are available from the BLM Eastern States Office at the address above. Case file documents, ALES 51589, are available for inspection at the BLM Eastern States Office.

Dated: August 13, 2004.

Ruth Welch,

Acting State Director.

[FR Doc. 04–19910 Filed 8–31–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–134–1610–DQ]

Notice of Call for Nominations for the Colorado Canyons National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is requesting nominations for four unfilled membership positions on the Colorado Canyons National Conservation Area Advisory Council. The Council advises the Secretary and the BLM on resource management issues associated with the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than October 1,2004.

ADDRESSES: Send completed nominations to: Colorado Canyons National Conservation Area Manager, Grand Junction Field Office, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506.

FOR FURTHER INFORMATION CONTACT: Raul Morales, Grand Junction Associate Field Manager, (970) 244–3066, *raul_morales@co.blm.gov*, or visit the Web site at *http://www.co.blm.gov/colocanyons/index.htm*.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Colorado Canyons National Conservation Area Advisory Council. Individuals may nominate themselves for Council membership. You may obtain nomination forms from the Grand Junction Field Office, BLM or download the application from the Internet site (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**, above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Grand Junction Field Office. You may make nominations for the following categories of interest:

(1) A member of, or nominated by, the Mesa County Board of County Commissioners.

(2) A member of, or nominated by, the Northwest Colorado Resource Advisory Council.

(3) Two members residing in, or within reasonable proximity to, Mesa

County, Colorado, with recognized backgrounds reflecting—

(A) The purposes for which the National Conservation Area or Wilderness was established; and

(B) The interests of the stakeholders that are affected by the planning and management of the National Conservation Area and Wilderness. The specific category the nominee would like to represent should be identified in the letter of nomination and on the nomination form. The Grand Junction Field Office will collect the nomination forms and letters of reference and distribute them to the officials responsible for reviewing and recommending nominations (commissioners of Mesa County, the Northwest Colorado Resource Advisory Council, and the BLM). The BLM will then forward recommended nominations to the Secretary of the Interior who has responsibility for making the appointments.

The purpose of the Colorado Canyons National Conservation Area Advisory Council is to advise the BLM on the management of the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above. Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Raul Morales,

Manager, Colorado Canyons National Conservation Area.

[FR Doc. 04–19917 Filed 8–31–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW154968]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice or proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW154968 for lands in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW154968 effective March 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–19911 Filed 8–27–04; 1:21 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW141861]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW141861 for lands in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW141861 effective November 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–19912 Filed 8–27–04; 1:21 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW147446]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice or Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW147446 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16–2/3 percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147446 effective February 1, 2004, under the original terms and conditions of the lease and the

increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–19915 Filed 8–31–04; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–25 (Second Review)]

Anhydrous Sodium Metasilicate From France

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on anhydrous sodium metasilicate from France.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 21, 2004. Comments on the adequacy of responses may be filed with the Commission by November 15, 2004. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On January 7, 1981, the Department of Commerce issued an antidumping duty order on imports of anhydrous sodium metasilicate from France (46 FR 1667). Following five-year reviews by Commerce and the Commission, effective October 21, 1999, Commerce issued a continuation of the antidumping duty order on imports of anhydrous sodium metasilicate from France (64 FR 56737). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is France.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as anhydrous sodium metasilicate. In its full five-year review determination, the Commission found that the Domestic Like Product consisted of all anhydrous sodium metasilicate, as defined within Commerce's scope of the first review. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of anhydrous sodium metasilicate. In its full five-year review determination, the Commission found that the Domestic Industry includes all firms that produce anhydrous sodium metasilicate. One Commissioner defined the Domestic Industry differently.

(5) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review 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 review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–096, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 15, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country,

provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 24, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19940 Filed 8–31–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–101 (Second Review)]

Greige Polyester/Cotton Printcloth From China

AGENCY: International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on greige polyester/cotton printcloth from China.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 25, 2004.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On June 4, 2004, the Commission determined that circumstances warranted a full review pursuant to section 751(c)(5) of the Act in the subject five-year review (69 FR 33661, June 16, 2004). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review 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 this review 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, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

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 this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review 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 review will be placed in the nonpublic record on March 11, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on March 31, 2005, 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 March 21, 2005. 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 March 24, 2005, 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), 207.24, and 207.66 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 to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 22, 2005. 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 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 11, 2005; 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 review may submit a written statement of information pertinent to the subject of the review on or before April 11, 2005. On May 3, 2005, 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 May 5, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's 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 review must be served on all other parties to the review (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 review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 26, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19918 Filed 8–31–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 104–TAA–7 (Second Review), Investigation Nos. AA1921–198–200 (Second Review)]

Sugar From the European Union; Sugar From Belgium, France, and Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on sugar from the European Union and the antidumping findings on sugar from Belgium, France, and Germany.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on sugar from the European Union and/or revocation of the antidumping findings on sugar from Belgium, France, and Germany would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 21, 2004. Comments on the adequacy of responses may be filed with the Commission by November 15, 2004. For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On July 31, 1978, the Department of the Treasury issued a countervailing duty order on imports of sugar from the European Union (43 FR 33237). There was no Commission determination of material injury by reason of subsidized imports prior to issuance of the order because imports from the European Union were not eligible for an injury test unless they were duty free. However, pursuant to section 104 of the Trade Agreements Act of 1979, the Commission made a determination in May 1982 that the domestic industry producing sugar would be threatened with material injury by reason of subsidized imports of sugar from the European Union if the countervailing duty order covering such imports were to be revoked. On June 13, 1979, following affirmative injury determinations by the Commission, the Department of the Treasury issued antidumping findings on imports of sugar from Belgium, France, and Germany (44 FR 33878). Following five-year reviews by Commerce and the Commission, effective October 28, 1999, Commerce issued a continuation of the countervailing duty order on imports of sugar from the European Union and the antidumping findings on imports of sugar from Belgium, France, and Germany (64 FR 58033). The Commission is now conducting second reviews to determine whether revocation of the order and findings would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–097, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Belgium, the European Union, France, and Germany.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination concerning sugar from the European Union, the Commission found the Domestic Like Product to consist of both beet and cane sugar, whether raw or refined. The Commission did not make a Domestic Like Product determination per se in its original determinations concerning sugar from Belgium, France, and Germany. In its full five-year review determinations, the Commission found the Domestic Like Product to consist of ''raw and refined sugar, whether cane or beet.''

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination concerning sugar from the European Union, the Commission defined the Domestic Industry as all growers, processors, and refiners of beet and cane sugar. In its original determinations concerning sugar from Belgium, France, and Germany, the Commission defined the Domestic Industry as producers of sugar cane and raw cane sugar in the Southeastern region of the United States. In its full five-year review determinations, the Commission found one national industry and defined the Domestic Industry to include sugar cane and sugar beet growers, as well as cane millers, cane refiners, and beet processors. Please use the latter definition of Domestic Industry in responding to item (4) in the section of this notice entitled ''Information To Be Provided In Response To This Notice Of Institution.''

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews 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 reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 15, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a

complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order and/or revocation of the antidumping findings on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry. Please indicate which of the definitions with which you agree. If you disagree with all of the above definitions of Domestic Like Product and Domestic Industry, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: August 24, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19939 Filed 8–31–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 012–2004]

Privacy Act of 1974, System of Records

The Department of Justice (DOJ), Justice Management Division (JMD), proposes to modify the Employee Assistance Program (EAP) Treatment and Referral Records, Justice/JMD–016, to correct typographical errors and add previously omitted language.

These minor changes do not require a comment period or notification to OMB and the Congress. The modifications will be effective September 1, 2004. Questions regarding the modification may be directed to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division (JMD), Department of Justice, Washington, DC 20530.

The modifications to the system description are set forth below.

Dated: August 26, 2004.

Joanne W. Simms,

Deputy Assistant Attorney General, Human Resources Administration.

JUSTICE/JMD–016

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling and Referral Records, Justice/JMD–016.

[Insert after System Name the following heading.]

SYSTEM CLASSIFICATION:

Not classified.

SYSTEM LOCATION:

[Delete current entry and substitute the following.]

The Justice Management Division, EAP staff, maintains records. Interested parties wishing to correspond regarding records should direct their inquiries to the EAP System Manager, DOJ Workforce Support Group, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530, or call (202) 514–1846.

* * * * *

PURPOSE OF THE SYSTEM:

* * * * *

[Delete final phrase under the heading ''Purpose'' and make it a new heading to read as follows:]

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

[Insert after Routine Uses the following heading:]

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[Delete current entry and substitute the following.]

DOJ Workforce Support Group, Assistant Director, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530, or call (202) 514–1846.

NOTIFICATION PROCEDURES:

[Replace current sentence with the following.]

Same as Record Access Procedures.

* * * * *

CONTESTING RECORD PROCEDURES:

[Replace the first sentence in the current language with the following.]

Direct all requests to contest or amend information to the EAP System Manager identified above. [Continue with the remainder of the paragraph.] * * *

* * * * *

[FR Doc. 04–19875 Filed 8–31–04; 8:45 am]

BILLING CODE 4410–CG–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 26, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, 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 and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Trade Act Participant Report (TAPR).

OMB Number: 1205–0392.

Frequency: Quarterly.

Affected Public: State, local or tribal government.

Number of Respondents: 50.

Number of Annual Responses: 200.

Total Burden Hours: 9,500.

Estimated Time Per Response: 10.3 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $325,000.

Description: This is a Government Performance and Results Act complaint data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for its participants.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–19903 Filed 8–31–04; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–105]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathy Shaeffer, Code V, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting approval for a new collection that will be used to voluntary collect ideas from the general public about ways to fulfill NASA's technology development challenges.

II. Method of Collection

NASA will utilize electronic methods to collect this information, via an on-line Web based form.

III. Data

Title: Centennial Challenges Idea Submission Web Forms.

OMB Number: 2700–XXX.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Time Per Response: ,25 hours.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04–19965 Filed 8–31–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–106]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that RNAS, Inc. of MN has applied for a partially exclusive patent license to practice the invention described and claimed in U.S. Patent Number 6,664,298 entitled ''Zero-Valent Metal Emulsion for Reductive Dehalogenation of DNAPLs,'' KSC–12246–2 entitled ''Zero-Valent Metal Emulsion for Reductive Dehalogenation of DNAPLs,'' and KSC–12246–3 entitled ''Zero-Valent Metal Emulsion for Reductive Dehalogenation of DNAPLs.'' All three technologies are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received within 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC-A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: August 11, 2004.

Keith T. Sefton,

Deputy General Counsel (Administration and Management).

[FR Doc. 04–19966 Filed 8–31–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection prepared by organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before November 1, 2004 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized

and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.

OMB number: 3095–0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

Dated: August 25, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–19877 Filed 8–31–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision;

2. The title of the information collection: 10 CFR Part 21, ''Report of Defects and Noncompliance'';

3. The form number if applicable: Not applicable;

4. How often the collection is required: On occasion;

5. Who will be required or asked to report: All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services of NRC licensed facilities or activities;

6. An estimate of the number of annual responses: 108 responses (72 plus 36 recordkeepers);

7. The estimated number of annual respondents: 36 respondents;

8. An estimate of the total number of hours needed annually to complete the requirement or request: 7,790 hours (5,112 for reporting and 2,678 for recordkeeping) and a total of 142 hours per each response and 74 hours per each recordkeeper;

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A;

10. Abstract: 10 CFR Part 21 implements Section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliance that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR Part 21 reports to determine whether the reported defects in basic components and related services and failures to comply at NRC licensed facilities or activities are potentially generic safety problems.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 1, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0035), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of August, 2004.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–19898 Filed 8–31–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 327, Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report, and NUREG/BR–0096, Instructions and Guidance for Completing Physical Inventory Summary Reports.

3. *The form number if applicable:* NRC Form 327.

4. *How often the collection is required:* The frequency of reporting corresponds to the frequency of required inventories, which depends essentially on the strategic significance of the SNM covered by the particular license. Certain licensees possessing strategic SNM are required to report inventories every 2 months. Licensees possessing SNM of moderate strategic significance must report every 6 months. Licensees possessing SNM of low strategic significance must report annually.

5. *Who will be required or asked to report:* Fuel facility licensees possessing special nuclear material.

6. *An estimate of the number of annual responses:* 23.

7. *The estimated number of annual respondents:* 10.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 98 hours (an average of approximately 4.25 hours per response for 23 responses).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC Form 327 is submitted by fuel facility licensees to account for special nuclear material. The data is used by NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) special nuclear material theft or diversion. NUREG/BR–0096 provides specific guidance and instructions for completing the form in accordance with the requirements appropriate for a particular licensee.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 1, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0139), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 25th day of August, 2004.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–19899 Filed 8–31–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NUREG–0800, ''Standard Review Plan'', Section 13.1.2–13.1.3, ''Operating Organization'' Modifications; Draft NUREG–1791, ''Guidance for Assessing Exemption Requests From the Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m)''; Notice of Availability

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of draft documents regarding operating organization and staffing and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a revision to Section 13.1.2 and 13.1.3 of NUREG–0800, ''Standard Review Plan, Operating Organization'' and a new draft document ''Guidance for Assessing Exemption Requests From the Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m)'' (NUREG–1791) for public comment.

DATES: Comments on these documents should be submitted by November 1, 2004. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: Members of the public are invited and encouraged to submit written comments to: Michael Lesar, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be sent electronically to *NRCREP@nrc.gov*.

These documents are available for public inspection at the Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (First Floor), Rockville, Maryland, from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html* using Accession numbers ML041550723 (for the draft NUREG) and ML041550746 (for the SRP revisions); and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment*.

Persons who do not have access to ADAMS or who encounter problems accessing the document in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209, (301) 415–4737, or by e-mail *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: James P. Bongarra, Jr., Engineering Psychologist, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 by telephone at (301) 415–1046 or e-mail at *jxb@nrc.gov*.

SUPPLEMENTARY INFORMATION:

SRP Section 13.1.2–13.1.3

SRP Section 13.1.2–13.1.3 provides review guidance for the NRC staff to use when evaluating a licensee's or applicant's operating organization, which includes consideration of whether the organization complies with the requirements of 10 CFR 50.54(l–m). The purpose of the NRC staff's review related to SRP Section 13.1.2–13.1.3 is to ensure that adequate and clear structure, functions, roles, responsibilities, staff size, and other relevant considerations for licensed operator staffing are established to operate and maintain the plant.

Minor changes were made to Revision 4 of SRP Section 13.1.2–13.1.3 from the version that was published in November 1999. The changes include additions and language that describe the process for the review of exemption requests for numbers of excused staff along with clarification of some of the language, updating the references, and the addition of references to the staffing exemption request review process identified in the draft NUREG–1791.

Draft NUREG–1791, ''Guidance for Assessing Exemption Requests From the Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m)''

''Guidance for Assessing Exemption Requests from the Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m)'' provides regulatory guidance for the review of requests for exemptions from any of the staffing requirements of 10 CFR 50.54(l–m). The introduction of advanced reactor designs and the increased use of advanced automation technologies in existing nuclear power plants may change the roles, responsibilities, composition, and size of the crews required to control plant operations.

Current regulations regarding control room staffing, which are based on the concept of operation for existing light-water reactors, may no longer be appropriate for the concept of operations for advanced reactors. Therefore, applicants for an operating license for an advanced reactor, and current licensees who have implemented significant changes to existing control rooms, may wish to submit applications for exemptions from current staffing regulations.

The NRC staff will review the exemption requests and will determine whether the staffing proposals provide adequate assurance that public health and safety will be maintained at a level that is comparable to compliance with the current regulations. NUREG–1791 provides guidance for the NRC staff to perform a systematic review of exemption requests from the current staffing regulations in 10 CFR 50.54(m). The NUREG details the information, data, and review criteria needed to review the exemption request.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing these documents is available to the NRC staff. These documents are being issued for comment only and are not intended for interim use. The NRC will review public comments received on the documents, incorporate suggested changes, as necessary, and issue the final documents for use.

The NRC staff will use the policies and procedures in these documents to review all staffing exemption requests from 10 CFR 50.54 (l–m). These NUREGs will not substitute for the regulations, and compliance with the guidance provided in these documents will not be required. Licensees may propose alternative approaches to determine staffing levels for the exemption request different from those in these NUREGs, if applicants provide a basis for concluding that the exemption request(s) are in compliance with 10 CFR 50.12.

Dated in Rockville, MD, this 26th day of August, 2004.

For the Nuclear Regulatory Commission.

Frank Costello,

Acting Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–19900 Filed 8–31–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

September 2, 2004.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 69, Number 152, Page 48257) on August 9, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's September 9, 2004 Board of Directors meeting scheduled for 10 a.m. on September 9, 2004 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: August 30, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–20027 Filed 8–30–04; 11:29 am]

BILLING CODE 3210–01–M

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: Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220–0185. Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into ''buy-in agreements'' with the Secretary of Health and Human Services for the purpose of enrolling certain groups of needy people under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380-F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380-F is voluntary. One response is received from each respondent.

No changes are proposed to RRB Form RL–380-F. The completion time for Form RL–380-F is estimated at 10 minutes per response. The RRB estimates that approximately 600 responses are received annually.

FOR FURTHER INFORMATION CONTACT: 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. 04–19882 Filed 8–31–04; 8:45 am]

BILLING CODE 7905–01–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:
Part 257, SEC File No. 270–252, OMB Control No. 3235–0306

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 material to the Office of Management and Budget for extension and approval.

Part 257 [17 CFR part 257] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, generally mandates the preservation, and provides for the destruction, of books and records of registered public utility holding companies subject to rule 26 under the Act and service companies subject to rule 93. Part 257 prescribes which records must be maintained for regulatory purposes and which media methods may be used to maintain them. Further, it sets a schedule for destroying particular documents or classes of documents.

The Commission estimates that there is an associated recordkeeping burden of 29 hours in connection with the record preservation programs administered by registered holding companies under part 257 (29 recordkeepers × 1 hour = 29 burden hours). In addition to the costs associated with the burden hours, the annual non-labor cost associated with complying with part 257 is estimated at $2,000 for each registered holding company system. The total estimated annual non-labor recordkeeping burden is $58,000 (29 recordkeepers × $2,000 = $58,000).

Written comments are invited on: (1) Whether the proposed record maintenance and destruction requirements under part 257 under the Act are necessary for the proper performance of the functions of the agency, including whether the requirement will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information required to be maintained under Part 257; and (4) ways to minimize the burden of the collection of information on respondents that is required to be maintained under part 257, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 25, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2007 Filed 8–31–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50259; File No. SR–NASD–2004–124]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Provide an Exception From Shareholder Approval Requirements When Officers, Directors, Employees or Consultants Participate in a Discounted Private Placement

August 25, 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 August 13, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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

Nasdaq proposes to provide an exception from shareholder approval requirements when officers, directors, employees or consultants participate in a discounted private placement.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.[3]

* * * * *

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)–(h) No Change.

(i) Shareholder Approval.

(1) Each issuer shall require shareholder approval prior to the issuance of designated securities under subparagraph (A), (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which options or stock may be acquired by officers, directors, employees, or consultants, except for:

(i) Warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan); or

(ii) Tax qualified, non-discriminatory employee benefit plans (*e.g.*, plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's independent compensation committee or a majority of the issuer's independent directors; or plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or

(iii) Plans or arrangements relating to an acquisition or merger as permitted under IM–4350–5; or

(iv) Issuances to a person not previously an employee or director of the company, or following a bonafide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's independent compensation committee or a majority of the issuer's independent directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved; *or*

(v) Sales by the issuer to officers, directors, employees or consultants as part of, or in connection with, sales to third parties that do not involve any public offering, where:

a. The sales are at prices less than the greater of book or market value of the company's stock (''discounted sales'');

b. The sales to officers, directors, employees or consultants are at the same price and on the same terms as the sales made to the third parties in the transaction;

c. The total number of shares sold or to be sold to all such officers, directors, employees or consultants, either individually or in the aggregate, is less than five percent of the total number of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is marked to show changes to NASD Rule 4350(i) and to Interpretive Material (''IM'') 4350–1, 4350–3 and 4350–5 as currently reflected in the NASD Manual available at *www.nasd.com*. No other pending or recently approved rule filings would affect the text of this Rule or the IMs.

shares issued or to be issued in the transaction; and

d. The total number of shares issued or to be issued to all officers, directors, employees, or consultants in the transaction, aggregated with all other discounted sales to officers, directors, employees, or consultants during the preceding 12-month period, does not exceed one percent of the total number of shares outstanding at the beginning of the 12-month period.

(B) When the issuance or potential issuance will result in a change of control of the issuer;

(C) In connection with the acquisition of the stock or assets of another company if:

(i) Any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(ii) Where, due to the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than a public offering for cash:

a. The common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

b. The number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares or common stock outstanding before the issuance of the stock or securities; or

(D) In connection with a transaction other than a public offering involving[:]

[(i)] The sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which *alone, or* together with sales by officers, directors, *employees, consultants*, or substantial shareholders of the company, equals 20% or more of *the* common stock or 20% or more of the voting power outstanding before the issuance. *For sales of discounted stock made to officers, directors, employees, or consultants of the company, see Rule 4350(i)(1)(A)(v).* [; or

(ii) The sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.]

(2)–(6) No change.

Cross Reference—IM–4350–1, Future Priced Securities

Cross Reference—IM–4350–2, Interpretative Material Regarding the use of Share Caps to Comply with Rule 4350(i)

Cross Reference—IM–4350–3, Definition of Public Offering

Cross Reference—IM–4350–5, Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Cross Reference—IM–4350–7, Code of Conduct

Cross Reference—Rule 4350(h), Conflicts of Interest

(j)–(n) No change.

* * * * *

IM–4350–1. Interpretive Material Regarding Future Priced Securities

Summary No change.

How the Rules Apply

Shareholder Approval

NASD Rule 4350(i)(1)(D) provides, in part:

Each issuer shall require shareholder approval [* * *] prior to the issuance of designated securities * * * in connection with a transaction other than a public offering involving [* * *] the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which *alone, or* together with sales by officers, directors, *employees, consultants*, or substantial shareholders of the company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.[1] *For sales of discounted stock made to officers, directors, employees, or consultants of the company, see Rule 4350(i)(1)(A)(v).*

* * * * *

Voting Rights No change.

The Bid Price Requirement No change.

Listing of Additional Shares No change.

Public Interest Concerns No change.

Reverse Merger No change.

Footnotes to IM–4350–1. No change.

* * * * *

IM–4350–3. Definition of a Public Offering

[Rule 4350(i)(1)(D) provides that shareholder approval is required for the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Under this rule, however, shareholder approval is not required for a ''public offering.'']

Rule 4350(i) contains several references to a ''public offering.'' Issuers are encouraged to consult with Nasdaq staff in order to determine if a particular offering is a ''public offering'' for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, Nasdaq staff will not treat an offering as a ''public offering'' for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a ''public offering'' for purposes of these rules, Nasdaq staff will consider all relevant factors, including but not limited to:

(i) The type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the issuer);

(ii) The manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);

(iii) The extent of the offering's distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the issuer and those investors);

(iv) The offering price (including the extent of any discount to the market price of the securities offered); and

(v) The extent to which the issuer controls the offering and its distribution.

* * * * *

IM–4350–5. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in these situations, given this potential for dilution.

Rule 4350(i)(1)(A) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) Any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) Any material increase in benefits to participants, including any material change to: (i) Permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) Any material expansion of the class of participants eligible to participate in the plan; and

(4) Any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an ''evergreen formula''), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances must be approved by the issuer's independent compensation committee or a majority of the issuer's independent directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 4350(i)(1)(A). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 4350(i)(1)(C).

Moreover, Rule 4350(i)(1)(A)(v) provides a de minimis exception to the requirement for shareholder approval for sales by the company to officers, directors, employees, or consultants at a price less than the greater of book or market value of the stock, also known as discounted private placements. Discounted private placements made to officers, directors, employees, or consultants of the company are to be considered ''compensation'' for purposes of Rule 4350(i)(1)(A) and would require shareholder approval. A de minimis exception to this requirement is provided solely in the limited circumstance where officers, directors, employees, or consultants are sold discounted stock as part of, or in connection with, sales to third parties, at the same price and on the same terms, and that do not involve any public offering. In addition, this exception requires that the total number of shares sold to all such officers, directors, employees or consultants, either individually or in the aggregate, be less than five percent of the total

shares to be issued in the transaction, and that the shares issued or to be issued in the transaction aggregated with all other discounted sales to officers, directors, employees, or consultants during the preceding 12-month period not exceed one percent of the total shares outstanding at the beginning of the 12-month period. Nasdaq intends that this exception be used solely in the situation where third parties that are considering investing in a company require a minimum level of participation in the company by officers, directors, employees, or consultants as a condition to their investment.

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's independent compensation committee or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 4350(i)(1)(A) and IM–4350–5, the term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. § 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) It covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing amendments to NASD Rule 4350(i)(1)(A) and IM 4350–5 relating to shareholder approval requirements for certain stock issuances to officers, directors, employees or consultants, when such issuances are not made as part of a public offering and are for less than the greater of book value or market value of the stock.[4] The proposed rule change provides a *de minimis* exception to the requirement for shareholder approval for sales by the company to officers, directors, employees, or consultants at a price less than the greater of book or market value of the stock, also known as discounted private placements. Discounted private placements made to officers, directors, employees, or consultants of the company are to be considered ''compensation'' for purposes of NASD Rule 4350(i)(1)(A) and would require shareholder approval. A *de minimis* exception to this requirement is provided solely in the limited circumstance where officers, directors, employees, or consultants are sold discounted stock as part of, or in connection with, sales to third parties, at the same price and on the same terms, and that do not involve any public offering. In addition, this exception requires that the total number of shares sold to all such officers, directors, employees or consultants, either individually or in the aggregate, be less than five percent of the total shares to be issued in the transaction, and that the shares issued or to be issued in the transaction aggregated with all other discounted sales to officers, directors, employees, or consultants during the preceding 12-month period not exceed one percent of the total shares outstanding at the beginning of the 12-month period. Nasdaq intends that this exception be used solely in the situation where third parties that are considering investing in a company require a minimum level of participation in the company by officers, directors, employees, or consultants as a condition to their investment.[5]

Nasdaq also notes that, while NASD Rule 4350(i)(1)(A) does not generally require shareholder approval of any issuances that are made as part of a public offering and of any issuances at a price at or above book and market value, shareholder approval may still be required for such issuances under other provisions of NASD Rule 4350(i) (for example, in the event of a change of control of the company) or under other rules.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general and with Section 15A(b)(6) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

[4] Nasdaq is also proposing amendments to its IM–4350–1 and IM–4350–3 that are not substantive and are intended to conform the language of these two IMs to the proposed substantive amendments described herein.

[5] Nasdaq also believes that the scope of this *de minimis* exception is sufficiently narrow as to encourage the third-party investors to be actively involved in the negotiation of the investment terms, thus allaying concerns of self-dealing by any officer or director participants in the investment. However, to further alert companies to self-dealing concerns and to remind them of their obligations in related party transactions, Nasdaq proposes to include cross references to NASD Rule 4350(h), which sets forth review and approval requirements for certain related party transactions, and to IM–4350–7, which discusses a code of conduct applicable to officers, directors and employees, and specifically highlights the harm that results when such individuals receive improper personal benefits.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NASD–2004–124 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–NASD–2004–124. 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 NASD. 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–NASD–2004–124 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1984 Filed 8–31–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50267; File No. SR–NASD–2004–105]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by National Association of Securities Dealers, Inc. To Amend Rule 4350(n) and IM–4350–7 To Provide Time Frames for Foreign Issuers and Foreign Private Issuers To Disclose Certain Code of Conduct Waivers

August 26, 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 July 8, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On August 23, 2004, Nasdaq filed an Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 20, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq replaced the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to change NASD Rule 4350 and related interpretative material to make a clarifying amendment to that rule relating to foreign issuers. Nasdaq will implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.[4]

* * * * *

Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)–(m) No Change.

(n) Code of Conduct.

Each issuer shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a ''code of ethics'' set out in Section 406(c) of the Sarbanes—Oxley Act of 2002 (''the Sarbanes-Oxley Act'') and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or executive officers must be approved by the Board. [Domestic issuers] *Issuers, other than foreign private issuers*, shall disclose such waivers in a Form 8–K within five business days. *Foreign private issuers shall disclose such waivers either in a Form 6–K or in the next Form 20–F or 40–F.*

* * * * *

IM–4350–1 through IM–4350–6

No Change.

IM–4350–7: Code of Conduct

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of an issuer is intended to demonstrate to investors that the board and management of Nasdaq issuers have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any

[4] Changes are marked to the rule text that appears in the electronic NASD manual found at *http://www.nasd.com*. No pending or approved rule filings would affect the text of these rules.

questionable behavior. For company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 4350(n) requires issuers to adopt a code of conduct complying with the definition of a ''code of ethics'' under Section 406(c) of the Sarbanes-Oxley Act of 2002 (''the Sarbanes-Oxley Act'') and any regulations promulgated thereunder by the Commission. See 17 CFR 228.406 and 17 CFR 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 4350(n) must apply to all directors, officers, and employees. Issuers can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a ''code of ethics.''

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the company, as when the individual receives improper personal benefits as a result of his or her position with the company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the company. Also, the disclosures an issuer makes to the Commission are the essential source of information about the company for regulators and investors—there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board and must be [promptly] disclosed to shareholders, along with the reasons for the waiver. [This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the company to the greatest extent possible.] [Consistent with applicable law, domestic] *All* issuers*, other than foreign private issuers*, must disclose such waivers in a Form 8–K within five business days. *Foreign private issuers must disclose such waivers either in a Form 6–K or in the next Form 20–F or 40–F. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the company and its shareholders to the greatest extent possible.*

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq rules currently require all issuers to adopt a code of conduct applicable to all directors, officers, and employees of the issuer and that such code require that any waivers of the code for directors or executive officers must be approved by the Board and promptly disclosed to shareholders, along with the reasons for the waiver. These rules require that domestic issuers make such disclosure in a Form 8–K within five business days. Nasdaq now proposes to clarify the time frame in which non-U.S. issuers must make such disclosure. Specifically, foreign issuers, other than foreign private issuers, will be required to make disclosure in the same manner as domestic issuers. Foreign private issuers will be required to make the disclosure either on the issuer's next Form 20–F or 40–F, or on a Form 6–K. This disclosure method and timing is consistent with that required by the Commission for waivers to a code of ethics for senior financial officers and the principal executive officer.[5] As the Commission noted in approving those rules, this differing treatment reflects the fact that foreign private issuers do not have any specific interim or current disclosure requirements mandated by the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general and with Section 15A(b)(6) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. Clarifying the timing of disclosure regarding code of conduct waivers by foreign issuers and foreign private issuers will serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[5] *See* Securities Act Release No. 8177, 68 FR 5110 (Jan. 31, 2003) (adopting new Item 16B to Form 20–F and paragraph (9) to General Instruction B of Form 40–F).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(6).

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–NASD–2004–105 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–NASD–2004–105. 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 NASD. 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–NASD–2004–105 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50262; File No. SR–NASD–2004–118]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Introduce an Extranet Access Fee for Extranet Providers To Provide Direct Access Services for Nasdaq Market Data Feeds

August 25, 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 August 4, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to add paragraph (v) to Rule 7010 to introduce an extranet access fee for extranet providers to provide direct access services for Nasdaq market data feeds. The text of the proposed rule change is set forth below. Proposed new language is in italics.[3]

7010. System Services

(a)–(u) No change.

(v) Extranet Access Fee

Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of $750 per recipient Customer Premises Equipment (''CPE'') Configuration. If an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration. For purposes of this paragraph (v), the term ''Customer Premises Equipment Configuration'' shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 rule filing is to provide market data customers with more options for direct access connectivity[4] to Nasdaq market data feeds.[5] Currently, MCI, Inc. (''MCI'') is the sole provider of direct access connections to Nasdaq's market data feeds. The monthly fees for direct access connections are set forth in contracts between MCI and its direct access customers. MCI's monthly direct access fees depend on the customer's particular bandwidth needs.[6] Nasdaq proposes to

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed changes are marked from Rule 7010 as it appears in the NASD Manual available at *http://www.nasd.com*. There are no pending rule filings that affect this rule filing.

[4] A direct access connection means a connection through a private network provider where the provider transmits Nasdaq's market data feeds to the recipient but does not control the devices used to receive the market data feeds at the recipient's site.

[5] The proposed rule change applies to connectivity services for both Nasdaq's Securities Information Processor (''SIP'') and proprietary market data feeds. Nasdaq will not permit any extranet provider to obtain access to Nasdaq's SIP market data feeds until approval for such access is granted pursuant to the Unlisted Trading Privileges (''UTP'') Plan. Upon approval by the UTP Plan, Nasdaq would include its SIP market data feeds in the extranet access offering without additional charges.

[6] The term ''bandwidth'' refers to the amount of data that can be transmitted over a circuit in one second. Nasdaq's market data feeds have specific minimum bandwidth requirements. For example, Nasdaq's TotalView data feed requires a minimum of 4000 Kbs/feed. Thus, the more market data feeds

establish connections with extranet providers who will also offer direct access connectivity to Nasdaq's market data feeds. Direct access customers will then be free to contract with such extranet providers instead of MCI to receive direct access connectivity.

As noted above, MCI is the sole provider of direct access connections to Nasdaq's market data feeds. In order to comply with Nasdaq's market data integrity requirements, MCI first processes Nasdaq's market data feeds through its proprietary error correction system, the Republisher. This error correction system is necessary because gaps of information may be lost when a data feed is transmitted to a recipient's site. After MCI ''republishes'' the market data feeds, they are then transmitted across MCI's network. A republished data feed gives MCI's customers the ability to recover any gaps of information that may have occurred during transmission. The cost of this enhanced service is included in MCI's monthly direct access fees. MCI owns and is the exclusive operator of the Republisher for Nasdaq until December 31, 2005. In 2006, Nasdaq plans to transition to its own error correction system to replace the Republisher.[7]

In order to monitor the transmission quality of its market data feeds, Nasdaq has an existing connection with MCI's Republisher that routes a copy of all republished market data feeds back to Nasdaq. Nasdaq proposes to permit extranets access to this connection in order for extranets to transmit republished market data feeds. Providing extranets with access to republished market data feeds from Nasdaq will enable extranets to supply the same quality market data feed services that vendors purchase today through MCI.

Nasdaq proposes to charge extranet providers a monthly fee of $750 per recipient Customer Premises Equipment Configuration for access to Nasdaq's republished market data feeds. The proposed fee will be used to support Nasdaq's costs associated with establishing and maintaining multiple extranet connections. These costs include the costs for republishing, increased network monitoring and maintenance costs, and new administrative and operational costs. The proposed access fee will not affect distributor or subscriber fees.[8] Since MCI currently operates Nasdaq's network and republishes the market data feeds pursuant to a contract, it will not, by definition, be considered an extranet. In 2006, MCI will stop operating the current network and the Republisher for Nasdaq. At that time, MCI will become an extranet if it chooses to continue offering direct access connections to Nasdaq's data feeds.

The proposed rule change will result in extranet providers competing not only amongst themselves, but also against MCI for direct access customers. Nasdaq believes that competition in the direct access market could potentially decrease the costs for direct access connections and may drive innovation in the direct access market, which may benefit Nasdaq's market data customers through improved network service offerings and lower prices.[9] Lower connectivity costs and innovative service offerings could also result in more direct access customers and a wider distribution of Nasdaq market data feeds.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] in general and with Section 15A(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. All users that establish an extranet connection with Nasdaq to access market data feeds from Nasdaq will pay the same fee, which will offset republishing costs, network monitoring and maintenance costs, and other administrative and operational costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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 No. SR–NASD–2004–118 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 No. SR–NASD–2004–118. 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

a customer orders, the more bandwidth the customer will need to purchase from the direct access provider.

[7] Nasdaq plans to invest in its own error correction system in order to gain more control over the quality of its market data feeds. Furthermore, some extranets have expressed their unwillingness to operate their own error correction system to meet Nasdaq's data integrity requirements because of cost considerations.

[8] Nasdaq distributor and subscriber fees apply when an entity seeks to use or repackage the content in a market data feed. The proposed extranet access fee shall apply when an entity seeks to connect to Nasdaq to transport market data feeds without repackaging or using the content of the data feed (*i.e.*, offer direct access connections). A particular entity may, depending on the circumstances, be required to pay all three types of fees.

[9] Nasdaq states that, indeed, in anticipation of extranets also offering direct access connections, MCI recently started offering new direct access packages at prices substantially lower than the prices for its older direct access packages.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(5).

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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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 No. SR–NASD–2004–118 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–1986 Filed 8–31–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2004, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2005. See 69 FR 36148 (June 28, 2004). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2005, and possibly continuing into the amendment cycle ending May 1, 2006. While the Commission intends to address these priority issues, it recognizes that other factors, most notably the resolution of *United States* v. *Booker,* __ F.3d __, 2004, WL 1535858 (7th Cir. 2004), cert. granted, __ S.Ct. __, 2004 WL 1713654 (Aug. 2, 2004) (No. 04–104) and *United States* v. *Fanfan,* 2004 WL 1723114 (D. Me. June 28, 2004), cert. granted, __ S.Ct. __, 2004 WL 1713655 (Aug. 2, 2004) (No. 04–105), both of which currently are pending before the United States Supreme Court, as well as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of the identified policy priorities by the statutory deadline of May 1, 2005.

The Commission's policy priorities for the upcoming amendment cycle are as follows:

(1) Implementation of crime legislation enacted during the second session of the 108th Congress warranting a Commission response;

(2) Continuation of its policy work regarding immigration offenses, specifically, offenses under §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), and 2L1.2 (Unlawfully Entering or Remaining in the United States), and Chapter Two, Part L, Subpart 2 (Naturalization and Passports), which also may involve the formation of an ad hoc advisory group on immigration offenses;

(3) Completion of its work on the ''15 Year Study,'' which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act;

(4) Continuation of its multi-year research and policy work, and possible guideline amendments, relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (a) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (b) assessment of the criminal history rules for the inclusion or exclusion of certain prior offenses; (c) assessment of the criminal history rules for related cases; and (d) consideration of other application issues relating to simplifying the operation of Chapter Four;

(5) Continued review of data regarding the incidence of downward departures and fast-track programs, in view of the PROTECT Act;

(6) Continuation of its work with Congress and other interested parties on cocaine sentencing policy in view of the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy;*

(7) A general review of the firearms guidelines in Chapter Two, Part K (Offenses Involving Public Safety), including an assessment of non-MANPADS destructive devices;

(8) Consideration of policy statements pertaining to motions under 18 U.S.C. § 3582(c)(1)(A)(i) for sentence reductions for ''extraordinary and compelling reasons';

(9) A general review of, and possible amendments pertaining to, hazardous materials, and possibly other environmental offenses under Chapter Two, Part Q (Offenses Involving the Environment);

(10) Continued monitoring of, and/or possible amendments pertaining to, section 5 of the CAN–SPAM Act, Pub. L. 108–187;

(11) Other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (a) resolution of a number of circuit conflicts, including the circuit conflict regarding the definition of ''felony'', as incorporated into § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) effective November 1, 2004; (b) continuation of policy work regarding offenses involving gamma-butyrolactone (GBL), a precursor for gamma-hydroxybutyric acid (GHB), sentenced under § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); (c) simulated controlled substances; (d) structural issues regarding the Sentencing Table in Chapter Five, Part A, particularly ''cliff-like'' effects occurring between levels 42 and 43, and a possible adjustment to the offense level computation when the offense level exceeds level 43; (e) commentary regarding the appropriate starting point for departures under § 5K1.1 (Substantial Assistance), particularly in cases in which the government has moved for relief from imposition of an otherwise applicable mandatory minimum term of imprisonment; (f) commentary to § 3C1.1 (Obstructing or Impeding the Administration of Justice) regarding

encryption; and (g) counterespionage offenses under 18 U.S.C. 951.

(12) Amendments to the Commission's Rules of Practice and Procedure regarding retroactivity, public access to Commission materials, and access to nonpublic Commission meetings.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo Hinojosa,

Chair.

[FR Doc. 04–19791 Filed 8–31–04; 8:45 am]

BILLING CODES 2210–40–P

SMALL BUSINESS ADMINISTRATION

Region 1—Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, Maine will be hosting a public meeting on Tuesday, October 19, 2004, at 10 a.m. The meeting will be held at the U.S. Small Business Administration, Maine District Office, 68 Sewall Street, Room 510, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

If you have any questions or concerns regarding this meeting, please write or contact Mary McAleney, District Director, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, (207) 622–8386 phone, (207) 622–8277 fax.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–19798 Filed 8–31–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4808]

Culturally Significant Objects Imported for Exhibition Determinations: ''Calder-Miro''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Calder-Miro,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Phillips Collection, Washington, DC, from on or about October 9, 2004, to January 23, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 23, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–19941 Filed 8–31–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4807]

Culturally Significant Objects Imported for Exhibition Determinations: ''Drawn by the Brush: Oil Sketches by Peter Paul Rubens''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition Drawn by the Brush: Oil Sketches by Peter Paul Rubens,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Bruce Museum of Arts and Sciences, Greenwich, Connecticut, from on or about September 17, 2004 until on or about January 2, 2005, at the Berkeley Museum of Art/Pacific Film Archive, Berkeley, California, from on or about January 26, 2005 until on or about April 24, 2005, at the Cincinnati Art Museum, Cincinnati Ohio, from on or about May 20 until on or about August 28, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 24, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–19942 Filed 8–31–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4806]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Golden Children: Four Centuries of European Portraits From the Yannick and Ben Jakober Foundation''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Golden Children: Four Centuries of European Portraits from the Yannick and Ben Jakober Foundation,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibition

objects at the Frisk Center for the Visual Arts, Nashville, TN from on or about September 23, 2004 to on or about January 2, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–19943 Filed 8–31–04; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice 4805]

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State (DOS) publishes for public comment interim final policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: Comments must be submitted on or before (30) days from the date of publication. DOS will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

ADDRESSES: Interested persons should submit written comments to Moisés Behar, Chief of the Diversity Management and Outreach Section, U.S. Department of State, Office of Civil Rights, 2201 C Street, NW., Washington, DC 20520 or *BeharM@state.gov;* comments may also be submitted by facsimile at (202) 647–4969.

FOR FURTHER INFORMATION CONTACT: Moisés Behar, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520; Tel. (202) 647–9896; e-mail *BeharM@state.gov.* Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI) and DOS regulations implementing Title VI, recipients of Federal financial assistance from the DOS (recipients) have a responsibility to ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. *See* 22 CFR 141.3. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice (DOJ), guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework set forth by DOJ.

On March 14, 2002, the Office of Management and Budget (OMB) issued a report to Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. *See* 67 FR 41455 (June 18, 2002). This interim final DOS guidance is based upon and incorporates the legal analysis and compliance standards of the model June 18, 2002, DOJ LEP Guidance for Recipients.

The primary focus of this guidance is on entities that receive Federal financial assistance from DOS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, and operate programs or activities or portions of programs or activities in the United States and its territories.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance is not subject to the requirements of Executive Order 12866.

The text of the complete proposed guidance document appears below.

Dated: August 24, 2004.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are considered to be limited English proficient, or ''LEP.'' While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against

[1] DOS recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DOS will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, this policy guidance requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally-assisted programs aimed at the American public do not leave some individuals behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those serviced by federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

In addition, many DOS recipients also receive Federal financial assistance from other Federal agencies, such as the Department of Education or the Department of Health and Human Services. While guidance from those Federal agencies is consistent with the DOS guidance, recipients receiving assistance from multiple agencies should review those agencies' guidance documents at *http://www.lep.gov* for a more focused explanation of how the standards apply in portions of programs or activities that are the focus of funding from those agencies.

There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally-assisted programs due to such costs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, DOS plans to work with representatives of recipient organizations, other Federal agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOS intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

Department of State regulations promulgated pursuant to Section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' 22 CFR 141.3.

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOS, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally-funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (DOJ LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, the Civil Rights Division of DOJ issued a memorandum clarifying and reaffirming the DOJ LEP Guidance in light of

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

Sandoval.[3] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This guidance document is thus published at the direction of Executive Order 13166 and pursuant to Title VI and the Title VI regulations. It is consistent with the DOJ Guidance. 67 FR 41455 (June 18, 2002) (also available at *http://www.lep.gov*).

III. Who Is Covered?

The purpose of Title VI, and one purpose of Executive Order 13166, is to ensure nondiscrimination in the United States or its territories in federally assisted programs and activities. Thus, the primary focus of this guidance is all entities that receive Federal financial assistance from DOS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, and operate programs or activities or portions thereof in the United States and its territories. Title VI applies to all Federal financial assistance, which includes, but is not limited to, awards and loans of Federal funds, awards or donations of Federal property, details of Federal or federally funded personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Examples of recipients of DOS assistance covered by this guidance include, but are not limited to:

—Recipients of grants designed to assist in receiving, resettling, and providing support for refugees in the United States;
—State and local governments and related organizations who are recipients of Foreign Service officer special domestic assignments or other State Department-funded positions;
—Organizations and institutions receiving grants to implement cultural, academic, or other exchange programs domestically;
—Nonprofit organizations; and
—Institutions of higher learning.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.[4]

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' and can be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DOS recipients and should be considered when planning language services include, but are not limited to:

—Persons who come into contact with resettlement services;
—Persons who participate in cultural or academic exchanges funded by DOS;
—Persons who encounter or who are eligible to receive benefits or services from a State or local agency that is a recipient of DOS assistance;
—Persons who encounter or are eligible to participate in portions of programs or activities of an institution of higher learning that receives DOS assistance;
—Other LEP persons who encounter or are eligible to receive benefits or services from DOS recipients; and
—Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or activity or portion thereof; (2) the frequency with which LEP individuals come in contact with the program or activity or portion thereof; (3) the nature and importance of the program, activity, service, benefit, or information provided by the recipient to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of encounters. For instance, some portions of a recipient's program or activity will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOS recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language

[3] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. *See*, e.g., *Sandoval,* 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is not private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

[4] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity, are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by the Federal grant agency as the recipient's service area. For instance, where a portion of a nonprofit that provides resettlement services serves a large LEP population, the appropriate service area is most likely that portion of the nonprofit organization, and not the entire population served by the agency. Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. In addition, there may be circumstances in which recipients appropriately identify English language skills as an eligibility criterion, such as in the case of a university English-language masters program. But other portions of the program, such as a university daycare or clinic open to the public, or various public community events, cultural exchanges, campus security, or other portions of a recipient's operations, may have a more significant LEP population that may be encountered or is eligible to participate. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient's program or activity.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers.

Other data in addition to prior experiences should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments.[5] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services adequately provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious economic, safety, education or even life-threatening implications for the LEP individual. For instance, the obligations of a federally-assisted entity providing resettlement assistance or a State or local agency providing health, safety, or economic aid differ from those of a federally-assisted program providing purely for cultural exchange (however, if a language barrier could result in denial or delay of access to important benefits, services, or information, or have a serious implication for a LEP person who participates in the cultural exchange, the legal obligation to provide language services in that circumstance would be higher). Decisions by a Federal, State, or local entity to make an activity compulsory or required in order to maintain or receive an important benefit or service or preserve a right, such as particular educational programs, appeals procedures, or compliance with rules and responsibilities, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community

[5] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

volunteers, for example, may help reduce costs.[6]

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services should be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Academic institutions, nonprofit organizations, and other recipients of DOS funds have a long history of interacting with people with varying language backgrounds and capabilities. In fact, many DOS recipients choose not only to provide interpretation and translation services, but also to provide English-language training for LEP individuals. This approach is consistent with the dual purposes of Executive Order 13166, and DOS's goal is to continue to encourage these efforts and to encourage the sharing of such promising practices among recipients, as well as to ensure meaningful linguistic access for LEP individuals.

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

—Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

—Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[7] and understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.

—Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles, particularly in a formal context such as a hearing.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in an administrative hearing or in the provision of information regarding legal rights and responsibilities, for instance, must be extraordinarily high, while the quality and accuracy of language services in a public lecture regarding cultural exchange programs need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOS recipients providing resettlement services, health, economic, educational, and safety services, and when important legal rights and responsibilities are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

[6] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost-effective.

[7] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, there may be languages which do not have an appropriate direct interpretation of some terms and the interpreter or translator should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

Hiring bilingual staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as hotline operators, guards, social workers, or refugee greeters, and others with staffers who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staffers are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with his or her role as an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring staff interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using telephone interpreter lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent enough to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where appropriate or necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion so that any logistical problems could be addressed.

Using community volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. This strategy may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of family and friends and informal interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, or other informal interpreters are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DOS recipient programs and activities, this is particularly true in situations in which health, safety, economic livelihood, or access to important benefits and services are at stake, or when mistakes in interpretation or translation could have serious consequences to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other informal interpreters often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a university offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high, and the number or proportion and frequency of LEP encounters may be quite low. In such a setting, an LEP person's use of

family, friends, or others to interpret may be appropriate.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What documents should be translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

—Consent, application, and complaint forms.
—Intake forms with the potential for important consequences.
—Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings.
—Notices advising LEP persons of free language assistance.
—Resettlement assistance materials, including materials designed to assist individuals in how to apply for or access services, benefits, or other assistance.
—Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
—Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, a flyer announcing a public lecture on cultural exchanges would not generally be considered vital, whereas written information provided to a newly-arrived refugee regarding resettlement services should likely be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case that providing the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages and/or the language of the recipient is not known. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into what languages should documents be translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic, for although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking could incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Also, certain languages (*e.g.*, Hmong) are oral rather than written, and thus a high percentage of such LEP speakers will likely be unable to read translated documents or written instructions since it is only recently that such languages

have been converted to a written form. Other populations may have low literacy rates as well. Analysis, including consultation with a range of community groups, may provide a recipient with insight into whether translation of vital documents meets the goal of providing meaningful access, or whether it makes more sense to focus those resources on oral, and, where appropriate, graphics-or visually-based information exchange.

Safe harbor. The following actions will be considered strong evidence of compliance with the recipient's written translation obligations:

(a) The DOS recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, even when there is only one refugee being served in a particular language, vital information should be provided orally, even if it is not translated in writing.

Competence of translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competency can often be achieved by the use of certified translators. Certification or accreditation may not always be possible or necessary.[8] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This process is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help consider whether a document is written at a good level for the audience. Also, there may be languages which do not have an appropriate direct translation of some terms. The translator should be able to provide an appropriate translation and should also make the recipient aware of this transformation. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts can help to avoid confusion by LEP individuals and may reduce costs. Creating or using existing glossaries of commonly-used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may call for translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of DOS recipients regarding certain health, economic, education, and safety services and certain legal rights). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of an Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (LEP plan) for use by recipients serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DOS recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''),

[8] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm* and *http://www.lep.gov.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly-encountered languages, notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available.
—How staff can obtain those services.
—How to respond to LEP callers.
—How to respond to written communications from LEP persons.
—How to respond to LEP individuals who have in-person contact with recipient staff.
—How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

—Staff know about LEP policies and procedures.
—Staff that have contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

—Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, or educational, resettlement, safety, or economic services or activities run by DOS recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the language help.[9]
—Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
—Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
—Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to access them.
—Including notices in local newspapers in languages other than English.
—Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
—Making presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in the service area or populations affected or encountered.
—Frequency of encounters with LEP language groups.
—Nature and importance of activities to LEP persons.
—Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
—Whether existing assistance meets the needs of LEP persons.
—Whether staff members know and understand the LEP plan and how to implement it.
—Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOS through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

[9] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

The Title VI regulations provide that DOS will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOS will inform the recipient in writing of this determination, including the basis for the determination. DOS uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOS must secure compliance through the termination of Federal assistance after the DOS recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. DOS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOS proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOS's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOS acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DOS will look favorably on the intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities, and for all potential language minority groups, may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOS recipients should ensure that the provision of appropriate assistance for significant LEP populations affected by activities having a significant impact on the health, safety, legal rights, education, economic status or immigration status, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

Dated: August 24, 2004.

Barbara S. Pope,

Assistant Secretary of Civil Rights, Department of State.

[FR Doc. 04–19944 Filed 8–31–04; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 20, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–18935.
Date Filed: August 20, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 N&C/CIRC 0278 dated August 20, 2004.
Mail Vote 405 Resolution 010w Special Passenger Amending Resolution, from Korea (Rep. of) to USA/US Territories, Intended effective date: September 10, 2004.

Docket Number: OST–2004–18928.
Date Filed: August 19, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 1177 dated August 20, 2004.
Mail Vote 404 Resolution 010u Special Amending Resolution, Intended effective date: September 1, 2004.

Docket Number: OST–2004–18918.
Date Filed: August 18, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 1169 dated August 6, 2004.
Composite Resolutions r1–r9, Minutes: PTC COMP 1176 dated August 20, 2004, Intended effective date: April 1, 2005.

Docket Number: OST–2004–18922.
Date Filed: August 18, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 1171 dated August 6, 2004.
Composite Resolutions 300 and 301, Minutes: PTC COMP 1176 dated August 20, 2004, Intended effective date: April 1, 2005.

Docket Number: OST–2004–18921.
Date Filed: August 18, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 1170 dated August 6, 2004.
Composite Resolutions 087aa and 092, Minutes: PTC COMP 1176 dated August 20, 2004, Intended effective date: April 1, 2005.

Docket Number: OST–2004–18916.
Date Filed: August 17, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0137 dated July 2, 2004.
TC2 Within Middle East Resolutions r1–r14, Minutes: PTC2 ME 0139 dated August 17, 2004, Tables: PTC2 ME Fares 0051 dated July 2, 2004, Intended effective date: January 1, 2005.

Maria Gulczewski,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. 04–19956 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18885]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 29 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before October 1, 2004.

ADDRESSES: You may submit comments identified by any of the following

methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2003–18885.

• *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366–2990, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the two-year period. The 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Paul G. Albrecht

Mr. Albrecht, age 33, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2004, his ophthalmologist noted, ''In my medical opinion, I feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Albrecht reported that he has driven straight trucks for seven years, accumulating 280,000 miles, and tractor-trailer combinations for two years, accumulating 22,000 miles. He holds a Class A commercial driver's license (CDL) from Wisconsin. His driving record for the last three years shows one crash and no convictions for moving violations in a CMV. Mr. Albrecht's vehicle was struck in the rear while he was stopped in traffic. Mr. Albrecht was not cited.

2. David W. Brown

Mr. Brown, 40, had a hemorrhage in his right eye in 2000. His visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his ophthalmologist certified, ''It is my medical opinion that Mr. Brown has sufficient vision to perform the driving tasks that are required to operate a commercial vehicle.'' Mr. Brown submitted that he has driven straight trucks and tractor-trailer combinations for 19 years, accumulating 190,000 miles in the former and 855,000 miles in the latter. He holds a Class A CDL from Tennessee. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

3. David J. Caldwell

Mr. Caldwell, 38, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/70. Following an examination in 2004, his optometrist stated, ''In my medical opinion, David Caldwell has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Caldwell reported that he has driven tractor-trailer combinations for 12 years, accumulating 168,000 miles. He holds a Class A CDL from New York. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

4. Walden V. Clarke

Mr. Clarke, 62, has had macular degeneration in his right eye for ten years. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/25. Following an examination in 2004, his optometrist certified, ''In my medical opinion, Mr. Clarke has sufficient functional visual acuity and peripheral vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Clarke reported that he has driven straight trucks for 25 years, accumulating 625,000 miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

5. Donald O. Clopton

Mr. Clopton, 47, has reduced vision in his right eye due to congenital toxoplasmosis. His best-corrected visual acuity in the right eye is 20/225 and in the left, 20/16. His optometrist examined him in 2004 and stated, ''In my medical opinion, Mr. Clopton has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Clopton submitted that he has driven tractor-trailer combinations for 20 years, accumulating 1.3 million miles. He holds a Class AM CDL from Alabama. His driving record for the last three years shows one crash and one conviction for a moving violation—speeding—in a CMV. According to the police report for the crash, the other driver involved stated he had tried to avoid a vehicle that entered his lane, forcing him to collide with Mr.

Clopton's vehicle. Neither driver was cited. The violation for speeding occurred at another time, when Mr. Clopton exceeded the speed limit by 10 mph.

6. Awilda S. Colon

Ms. Colon, 52, has a corneal scar in her left eye due to a childhood injury. Her best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004 her optometrist stated, ''After careful examination and talking with her I feel she has adequate vision to operate a commercial vehicle.'' Ms. Colon submitted that she has driven buses for 11 years, accumulating 77,000 miles. She holds a Class B CDL from Tennessee. Her driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

7. Richard B. Eckert

Mr. Eckert, 43, has been legally blind in his right eye for four years due to myopic degeneration. The visual acuity in his left eye is 20/30. His optometrist examined him in 2004 and stated, ''In my opinion, Richard does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Eckert reported that he has driven straight trucks for 21 years, accumulating 1.1 million miles. He holds a Class A CDL from New York. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

8. Charles B. Edwards

Mr. Edwards, 69, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his optometrist noted, ''I hereby certify Charles Edwards to be visually able to safely operate a commercial motor vehicle.'' Mr. Edwards reported that he has driven straight trucks for three years, accumulating 150,000 miles, and tractor-trailer combinations for 30 years, accumulating 3.4 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

9. Zane G. Harvey, Jr.

Mr. Harvey, 44, lost his right eye ten years ago due to trauma. His visual acuity in the left eye is 20/20. Following an examination in 2003, his optometrist certified, ''In my opinion, Mr. Harvey has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harvey reported that he has driven tractor-trailer combinations for 18 years, accumulating 450,000 miles. He holds a Class A CDL from Virginia. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

10. Robert T. Hill

Mr. Hill, 42, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''It is my opinion that this patient has sufficient vision to perform and continue the driving tasks required to operate a commercial vehicle even though the right eye is slightly less than the full 20/40 presently required.'' Mr. Hill reported that he has driven straight trucks for nine years, accumulating 936,000 miles, and tractor-trailer combinations for 15 years, accumulating 2.6 million miles. He holds a Class DM driver's license from Alabama, but at the time of his application he held a Class A CDL. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

11. Dale E. Johnson

Mr. Johnson, 40, has a congenital central field loss in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''In my medical opinion, I certify that Dale E. Johnson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 16 years, accumulating 576,000 miles. He holds a Class C CDL from Georgia. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

12. Jimmy D. Johnson II

Mr. Johnson, 32, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2004 and stated, ''In my medical opinion, Mr. Johnson does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for seven years, accumulating 262,000 miles, and tractor-trailer combinations for three years, accumulating 150,000 miles. He holds a Class AM CDL from Tennessee. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

13. Jeffrey M. Keyser

Mr. Keyser, 51, has had reduced vision in his right eye since 1987 due to histoplasmosis. His visual acuity in the right eye is 20/200 and in the left, 20/15. His optometrist examined him in 2004 and stated, ''It is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Keyser submitted that he has driven tractor-trailer combinations for 18 years, accumulating 2.1 million miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and two convictions for moving violations—speeding—in a CMV. He exceeded the speed limit by 12 mph in one instance and 13 mph in the other.

14. Donnie A. Kildow

Mr. Kildow, 51, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. His ophthalmologist examined him in 2004 and certified, ''He has a history of amblyopia as a child in his right eye, but it is my opinion that this will not hinder his ability to drive a commercial vehicle.'' Mr. Kildow submitted that he has driven straight trucks for ten years, accumulating 100,000 miles, and tractor-trailer combinations for 21 years, accumulating 837,000 miles. He holds a Class A CDL from Idaho. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

15. Carl M. McIntire

Mr. McIntire, 52, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/70 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''Because Mr. McIntire has 20/20 vision in his better eye with corrective lenses, in my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McIntire reported that he has driven tractor-trailer combinations for 34 years, accumulating 4.4 million miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

16. John C. McLaughlin

Mr. McLaughlin, 40, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/200. Following an

examination in 2004, his optometrist noted, ''In my opinion his vision is sufficient for driving a commercial vehicle.'' Mr. McLaughlin submitted that he has driven straight trucks for 14 years, accumulating 560,000 miles, and tractor-trailer combinations for nine years, accumulating 576,000 miles. He holds a Class A CDL from South Dakota. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

17. Daniel A. McNabb

Mr. McNabb, 49, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/70 and in the left, 20/15. Following an examination in 2003, his optometrist stated, ''In my opinion, Mr. McNabb has sufficient vision to safely drive a commercial vehicle.'' Mr. McNabb reported that he has driven tractor-trailer combinations for 28 years, accumulating 2.8 million miles. He holds a Class A CDL from Kansas. His driving record shows no crashes or convictions for moving violations in a CMV during the last three years.

18. David G. Meyers

Mr. Meyers, 32, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/70 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''I believe Mr. Meyers does have sufficient vision to operate a commercial vehicle.'' Mr. Meyers reported that he has driven straight trucks for seven years, accumulating 73,000 miles, and buses for six years, accumulating 285,000 miles. He holds a Class C CDL from New York. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

19. Thomas L. Oglesby

Mr. Oglesby, 56, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/80 and in the left, 20/20. Following an examination in 2004, his ophthalmologist noted ''I can certify in my medical opinion that Mr. Oglesby has the required vision to perform his commercial vehicle tasks.'' Mr. Oglesby reported that he has driven straight trucks for 30 years, accumulating 2.4 million miles. He holds a Class AM CDL from Georgia. His driving record for the last three years shows no crashes and two convictions for moving violations in a CMV. He exceeded the speed limit by 16 mph in one instance and failed to obey a traffic sign in the other.

20. Michael J. Paul

Mr. Paul, 45, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/70. Following an examination in 2004, his optometrist noted, ''In my medical opinion, Mr. Paul has sufficient vision to operate a commercial vehicle.'' Mr. Paul reported that he has driven straight trucks for eight years, accumulating 752,000 miles. He holds a Class D Chauffeur's license from Louisiana. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

21. Russell A. Payne

Mr. Payne, 54, lost the vision in his right eye 37 years ago due to trauma. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2004, his ophthalmologist certified, ''The visual acuity that you have, combined with your visual field testing, is adequate for driving commercial vehicles.'' Mr. Payne reported that he has driven straight trucks for 37 years, accumulating 2.2 million miles, and tractor-trailer combinations for ten years, accumulating 300,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

22. Rodney M. Pegg

Mr. Pegg, 31, lost his left eye 23 years ago due to trauma. His visual acuity in the right eye is 20/20. Following an examination in 2004, his ophthalmologist certified, ''In my medical opinion, Rodney Pegg has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pegg submitted that he has driven straight trucks for four years, accumulating 31,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

23. Raymond E. Peterson

Mr. Peterson, 53, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004, his ophthalmologist certified, ''It is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Peterson reported that he has driven tractor-trailer combinations for 35 years, accumulating 1.7 million miles. He holds a Class A CDL from Minnesota. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

24. Zbigniew P. Pietranik

Mr. Pietranik, 35, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/150 and in the left, 20/20. Following an examination in 2003, his ophthalmologist stated, ''In my opinion, he has sufficient vision to drive a commercial vehicle.'' Mr. Pietranik reported that he has driven tractor-trailer combinations for nine years, accumulating 1.0 million miles. He holds a Class A CDL from New Jersey. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

25. Dennis E. Pinkston

Mr. Pinkston, 62, has had a macular scar in his left eye for 44 years. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2004, his optometrist certified, ''In my opinion, Mr. Pinkston's vision is sufficient to perform driving tasks required to operate a commercial vehicle.'' Mr. Pinkston submitted that he has driven tractor-trailer combinations for 30 years, accumulating 3.7 million miles. He holds a driver's license from Indiana, but at the time of his application, he held a Class A CDL. His driving record shows no crashes or convictions for moving violations in a CMV during the last three years.

26. John C. Rodriquez

Mr. Rodriguez, 38, has hand motion only vision in his right eye due to corneal opacity. The visual acuity in his left eye is 20/20. His ophthalmologist examined him in 2004 and stated, ''In my opinion, he has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Rodriguez reported that he has driven straight trucks for four years, accumulating 73,000 miles. He holds a Class D driver's license from New Jersey. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

27. Robert B. Schmidt

Mr. Schmidt, 68, has been blind in his left eye since 1991 due to an injury. His best-corrected visual acuity in the right eye is 20/15. Following an examination in 2004, his optometrist certified, ''In my professional opinion, Robert has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schmidt reported that he has driven straight trucks for 18 years, accumulating 198,000 miles. He holds a Class B CDL from Iowa. His driving record for the last three years shows no

crashes or convictions for moving violations in a CMV.

28. Wesley L. Schoonover

Mr. Schoonover, 66, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/150. Following an examination in 2004, his ophthalmologist certified, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schoonover reported that he has driven straight trucks for 34 years, accumulating 680,000 miles. He holds a driver's license from Colorado, but at the time of his application he held a Class B CDL. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

29. Charles E. Wood

Mr. Wood, 61, has had a choroidal scar in his right eye since 1954. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''I find Mr. Wood to have sufficient vision to operate a commercial vehicle.'' Mr. Wood reported that he has driven straight trucks for 16 years, accumulating 320,000 miles. He holds a Class B CDL from Iowa. His driving record for the last three years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: August 26, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–19914 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2004–18975, Notice No. 04–5]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating the unauthorized marking of high-pressure compressed gas cylinders by New England Ski and Scuba, LLC, 520 Hartford Turnpike, Vernon, CT, 06066. New England Ski and Scuba's approval to requalify DOT specification cylinders was issued by RSPA under the company name, K&B Enterprises. RSPA believes that New England Ski and Scuba marked and certified an undetermined number of high-pressure DOT specification and exemption cylinders as properly tested in accordance with the Hazardous Materials Regulations (HMR), when the cylinders were not hydrostatically retested, or when the cylinders were improperly tested and inspected.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders not retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce.

FOR FURTHER INFORMATION CONTACT: Anthony Lima, Senior Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, W. Trenton, NJ 08034. Telephone: (609) 989–2252, Fax: (609) 989–2277.

SUPPLEMENTARY INFORMATION: Through its investigation of New England Ski and Scuba, RSPA obtained evidence that the company marked and certified an undetermined number of cylinders as properly tested in accordance with the HMR without conducting proper testing of the cylinders. Therefore, all cylinders marked and certified as requalified by New England Ski and Scuba may pose a safety risk to the public and should be considered unsafe for use in hazardous materials service until retested by a DOT-authorized facility. The cylinder types in question are carbon dioxide fire extinguishers, industrial gas cylinders, medical oxygen cylinders, and Self Contained Underwater Breathing Apparatus (SCUBA) tanks.

New England Ski and Scuba's Retester Identification Number (RIN) is C626. The cylinders in question are stamped with RIN C626 in the following pattern:

C 6

M Y

6 2

Anyone who has a cylinder serviced by New England Ski and Scuba, and has not retested the cylinder since then, should consider the cylinder potentially unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for proper retest. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged. Upon discharge, the cylinders should be taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and to ensure their suitability for continuing service. You may obtain a list of authorized cylinder retesters at the following Web site: *http://hazmat.dot.gov.* Under no circumstance should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

Issued in Washington, DC on August 27, 2004.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–19964 Filed 8–31–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34504]

Union Pacific Railroad Company—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49

U.S.C. 11323–24, for Union Pacific Railroad Company to lease and operate over 5.39 miles of The Burlington Northern and Santa Fe Railway Company (BNSF) line extending from BNSF milepost 474.01, near Marion, AR, to BNSF milepost 479.4, near West Memphis, AR.

DATES: This exemption is effective on September 25, 2004. Petitions to stay must be filed by September 7, 2004. Petitions to reopen must be filed by September 15, 2004.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34504 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, NE 68179–0001.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from ASAP Document Solutions by calling (301) 577–2600 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting 9332 Annapolis Rd., Suite 103, Lanham, MD 20706.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 26, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19926 Filed 8–31–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Nicholas J. DeNovio, Deputy Chief Counsel (Technical)
2. Heather C. Maloy, Associate Chief Counsel (Passthroughs & Special Industries)
3. Thomas R. Thomas, Division Counsel (Small Business/Self-Employed)
4. Edward L. Patton, Deputy Associate Chief Counsel (General Legal Services)
5. Joseph F. Maselli, Area Counsel, Division Counsel (Large & Mid-Size Business)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 25, 2004.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. 04–19934 Filed 8–31–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, James Carroll, Deputy General Counsel
2. Mark E. Matthews, Deputy Commissioner for Services and Enforcement
3. Eric Solomon, Deputy Assistant Secretary for Regulatory Affairs

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 25, 2004.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. 04–19935 Filed 8–31–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, ''Examination Questionnaire.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by October 1, 2004.

ADDRESSES: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0199, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to Mark Menchik, OMB Desk Officer, 1557–0199, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Electronic mail address is *mmenchik@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Examination Questionnaire.

OMB Number: 1557–0199.

Description: Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs.

National banks receive the Questionnaire at the conclusion of their supervisory cycle (12 or 18 month period).

Type of Review: Extension, without change, of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 2,100.

Estimated Total Annual Responses: 1,869.

Frequency of Response: On occasion.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden: 312 burden hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Dated: August 23, 2004.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 04–19884 Filed 8–31–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 15, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, September 15, 2004 from 2 p.m. to 3 p.m. ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: August 26, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–19948 Filed 8–31–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 169

Wednesday, September 1, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB92

Common Crop Insurance Regulations; Apple Crop Insurance Provisions

Correction

In rule document 04–19596 beginning on page 52583 in the issue of Friday, August 27, 2004, make the following correction:

On page 52591, in the first column, amendatory instruction 2 should read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

2. Amend §457.158 by revising the first sentence of the introductory text and sections 1 through 14 to read as follows:

[FR Doc. C4–19596 Filed 8–31–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Correction

In notice document 04–19486 beginning on page 52310 in the issue of Wednesday, August 25, 2004, make the following corrections:

1. On page 52311, in the first column, in the second full paragraph, in the 12th line, ''o4–C–5172'' should read ''04–C–5172''.

2. On the same page, in the same column, in the third full paragraph, in the sixth line, ''(321–252–1994)'' should read ''(312–353–1994)''.

3. On the same page, in the same column, in the same paragraph, in the 13th and 14th lines, ''Department of justice'' should read ''Department of Justice''.

4. On the same page, in the second column, in the fisrt line, ''254 cents'' should read ''25 cents''.

[FR Doc. C4–19486 Filed 8–31–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
September 1, 2004

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 226

Child and Adult Care Food Program; Improving Management and Program Integrity; Interim Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AC24

Child and Adult Care Food Program; Improving Management and Program Integrity

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule incorporates in the Child and Adult Care Food Program regulations the changes proposed by the Department in a rulemaking published on September 12, 2000. These changes result from the findings of State and Federal Program reviews; from audits and investigations conducted by the Office of Inspector General; and from amendments to the Richard B. Russell National School Act enacted in the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. This rule revises State agency criteria for approving and renewing institution applications; certain State- and sponsor-level monitoring requirements; and Program training and other operating requirements. Additional statutory changes resulting from enactment of the Agricultural Risk Protection Act of 2000 and the Grain Standards and Warehouse Improvement Act of 2000 were addressed in a separate interim rule published on June 27, 2002. The changes in this interim rule are primarily designed to improve Program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify Program requirements for State agencies and institutions.

DATES: This interim rule is effective October 1, 2004. The following provisions must be implemented no later than April 1, 2005: §§ 226.6(f)(1)(x), 226.6(m)(5), 226.15(e)(2) and (e)(3), and 226.18(e). The following provisions must be implemented no later than October 1, 2005: §§ 226.7(k), 226.10(c), 226.11(b), and 226.13(b). To be assured of consideration, comments must be postmarked on or before September 1, 2005. Comments will also be accepted via E-Mail submission if sent to *CNDPROPOSAL@FNS.USDA.GOV* no later than 11:59 p.m. on September 1, 2005.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *CNDPROPOSAL@FNS.USDA.GOV*
- Fax: Submit comments by facsimile transmission to: (703) 305–2879, attention Robert Eadie.
- Mail: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.
- Hand Delivery or Courier: Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.ndash;5 p.m.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Morawetz or Mr. Keith Churchill at the above address or by telephone at (703) 305–2590. A regulatory impact analysis was completed as part of the development of this interim rule. Copies of this analysis may be requested from Mr. Morawetz or Mr. Churchill.

SUPPLEMENTARY INFORMATION:

Background

Why Is This Rule Being Issued as an Interim Rule, Rather Than as a Final Rule?

As noted, USDA published a proposed rulemaking on September 12, 2000 (65 FR 55101). That proposed rule responded to State and Federal Program reviews which found numerous cases of mismanagement and Program abuse by child care sponsors and facilities. In addition, audits and investigations conducted by the Office of Inspector General (OIG) had raised serious concerns regarding the adequacy of financial and administrative controls on the Child and Adult Care Food Program (CACFP). As originally drafted, the proposed rulemaking presented a large number of changes designed to improve Program management and integrity in the CACFP.

In the spring of 2000, shortly before the proposed rule was published, the Agricultural Risk Protection Act of 2000 (ARPA) was enacted. ARPA included a number of nondiscretionary provisions affecting CACFP and requiring implementation. As a result, we published the September 2000 proposed rule featuring discretionary changes to CACFP, and then subsequently published an interim rule on June 27, 2002, implementing the nondiscretionary provisions mandated by ARPA (67 FR 43447). Due to the timing of ARPA's enactment and the subsequent publication of the proposed rule, those who commented on the proposed rule were largely unaware of the way in which the provisions of ARPA would interact with the discretionary regulatory proposals for CACFP published in September 2000.

We are publishing this interim rulemaking in order to provide a fuller opportunity for the public to comment on the interactions between the provisions of the proposed rule (which are included in this interim rule) and the interim rule subsequently published on June 27, 2002. After receiving public comment, we intend to publish a single CACFP final rule.

Why Did OIG Conduct These Audits and Investigations?

The Food and Nutrition Service (FNS) asked OIG to conduct an audit of the family day care home component of CACFP because of the results of State and Federal Program reviews. In its first audit, OIG selected five States for inclusion based on the States' total family day care home sponsor and provider enrollment, Program costs, and geographic location. Then, it randomly selected family day care home sponsors and providers within those five States to be included in the audits.

What Did the First OIG Audit Reveal?

In 1995, OIG released a report (No. 27600–6–At) that presented the results of these five audits. The audits evaluated:

- The adequacy of FNS, State agency, and family day care home sponsors' financial and administrative controls over meal claims;
- The accuracy of Program and participation data and claims for reimbursement submitted by family day care home sponsors; and
- Whether State agencies and participating sponsors complied with applicable laws, regulations, and guidance.

These audits found serious types of regulatory noncompliance by both sponsors and homes, including:

- Meals claimed for absent children;
- Meals claimed for nonexistent homes and children;
- Lack of documentation for meal counts and/or menu records;

• Failure by sponsors to perform required monitoring visits; and
• Sponsors' failure to require providers to attend training.

What Were OIG's Recommendations to FNS in the 1995 Audit?

Based on its findings, OIG's 1995 audit recommended changes to CACFP review requirements and management controls. In total, the 1995 audit made fifteen recommendations. We have completed action on the five OIG recommendations from the national audit that did not require regulatory change. The other ten recommendations require regulatory changes, most of which are addressed in this preamble.

The most significant recommendations from the 1995 audit were that the CACFP regulations be amended to require that:

• Sponsors and State agencies make unannounced reviews of day care homes;
• Parental contacts be made in order to verify children's Program participation;
• Sponsor reviews of day care homes include, at a minimum, reconciliation of enrollment, attendance, and meal claim data;
• All family day care home providers receive training each year; and
• All State agency reviews include certain specified review elements.

Recommendations from the 1995 audit that were included as statutory provisions in ARPA (for example, the requirement that sponsoring organizations make unannounced reviews of their facilities) were addressed in the previously-mentioned interim rule published on June 27, 2002.

Has OIG Conducted Other Audits As Well?

OIG conducted additional audits of family day care home and child care center sponsors, many of which State or Federal Program administrators had suspected of having serious management problems. These targeted audits, released in August of 1999 and were referred to collectively as ''Operation Kiddie Care'' by OIG, confirmed the findings of the 1995 audits and developed additional findings as well.

Is the Department Including in This Rule Any of the Recommendations From OIG's 1999 ''Operation Kiddie Care'' Audit?

Most of the ''Operation Kiddie Care'' audit's recommendations for regulatory changes also appear in this rule. As mentioned above, those changes that are not addressed here were included in the June 27, 2002, interim rule, due to the fact that they were mandated by ARPA.

Is There Any Recommendation From the Operation Kiddie Care Audit Not Included in Either Interim Rule?

Yes. We have not incorporated, either in this or the earlier interim rule, the audit's recommendation for a major Program design change in the way that sponsoring organizations of family day care home sponsors are reimbursed for their administrative expenses.

The current administrative reimbursement system for family day care home sponsors sets a cap on administrative expenses that is based on the total number of homes sponsored. Home sponsors are paid the lesser of: The number of homes administered times a per home administrative rate; actual administrative costs; or the sponsor's approved budget. Thus, because operating the Program in a larger number of homes raises the ceiling on the sponsor's maximum administrative earnings, some observers believe that there is a built-in financial incentive for day care home sponsors to administer the Program in more homes, and a built-in financial disincentive for sponsors to terminate homes' CACFP participation, even if the homes are doing a poor job of administering the Program.

The management improvement training provided to State Program administrators in 1999–2000, and the interim rule published in 2002, addressed this problem by providing State agencies with the tools to perform better and more thorough reviews of institutions' budgets and sponsors' management plans. Specifically, the performance standards mandated by ARPA should result in more thorough State agency reviews of institution applications which, consequently, should also help limit sponsors' administrative costs to those expenses that are reasonable and necessary for Program administration, regardless of the ceiling resulting from the homes times rates calculation.

However, at the time that the proposed rule was issued, these performance standards had not been fully implemented. For that reason, we asked readers of the proposed rule to comment on several possible alternatives to the current system of administrative reimbursement for day care home sponsors. These alternatives had been discussed with stakeholders during development of the proposed rule, and included:

• Eliminating homes times rates as a component of the administrative cost system, instead paying sponsors the lesser of actual costs or approved budget amounts;
• Establishing a fixed percentage of the meal reimbursement distributed to providers as the sponsor's administrative payment. In other words, if a sponsor disbursed $300,000 per month in meal reimbursements to its providers, it would receive, in addition to the $300,000 in meal reimbursements for its providers, up to some fraction (perhaps 10 to 15 percent) of that amount to cover all of their approved and allowable administrative expenses;
• Paying sponsors a fixed administrative fee for each reimbursable meal served by their providers;
• Lowering the per home administrative rates for sponsors of more than 200 homes, in order to reduce their financial incentive to sponsor more homes; and
• Establishing some other system of administrative reimbursement for home sponsors that commenters might recommend.

How Did Commenters Respond to These Possible Alternative Systems of Administrative Reimbursement for Day Care Home Sponsors?

A total of 484 commenters responded to our request for comments on these alternatives to the current administrative reimbursement system. After analyzing these comments, we have determined that no change to the current administrative reimbursement structure is warranted.

How Many Comments Did the Department Receive?

We Received a Total of 548 Comments on the Proposed Rule.

Who Commented on the Rule?

Of the 548 comments received, 353 were from individuals associated with institutions participating in CACFP (either independent centers or sponsoring organizations of homes or centers); 67 were from family day care home providers participating in the Program; 54 (representing 36 different States) were from State Program directors and their staffs; 21 were from State or National CACFP or children's advocacy organizations; and 53 were from parents, students, nutritionists, or other interested individuals whose institutional affiliation could not be determined.

How Is the Remainder of This Preamble Organized?

The preamble is divided into four parts, and follows the same organization used in both the proposed rule and the interim rule published on June 27, 2002:

I. State agency review of institutions' Program applications;
II. State agency and institution monitoring requirements;
III. Training and other operational requirements; and
IV. Other provisions mandated by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448, hereinafter referred to as the Healthy Meals Act); the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104–193, hereinafter referred to as PRWORA); and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336, hereinafter referred to as the Goodling Act). Readers of this preamble should note that none of the changes mandated by Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, is included in this rule. These changes will all be incorporated in one or more future rules.

While many of the changes discussed in parts I–III of this preamble are discretionary changes designed to improve Program management and streamline Program operations, we also included a number of changes to the CACFP regulations required by the Healthy Meals Act, PRWORA, and the Goodling Act. Most of the mandatory changes are located in part IV of this preamble, though some appear in other parts of the preamble, depending on whether the specific statutory change under consideration was thematically related to the discretionary changes being discussed in another part of the preamble. Non-discretionary provisions (*i.e.*, changes based on a statutory mandate) will be identified in the preamble discussion.

Part I. State Agency Review of Institutions' Program Applications

A. State Agency Review of a New Institution's Application

What does the NSLA Say With Regard to the Duration of an Application?

Section 204(a)(3) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147) amended section 17(d) of the Richard B. Russell National School Lunch Act (NSLA; 42 U.S.C. 1766(d)) by adding a new paragraph (2)(A) which requires the Department to ''develop a policy that allows institutions providing child care * * *, at the option of the State agency, to reapply for assistance * * * at 2-year intervals.'' It also required that State agencies choosing this option must ''confirm on an annual basis'' that each participating institution is in compliance with the licensing and approval requirements set forth at section 17(a)(1) of the NSLA (42 U.S.C. 1766(a)(1)). Later, section 116(b) the Healthy Meals Act amended section 17(d)(2)(A) (42 U.S.C. 1766(d)(2)(A)) of the NSLA by extending the two-year CACFP reapplication interval to three years.

Were Three-Year and One-Year Applications the Only Options Addressed in the Proposed Rule?

No. Although the NSLA requires reapplication for participation at least once every three years, it does not require annual or biennial applications to be the only alternatives to the triennial option. Therefore, we proposed to remove the references to an annual application found in the introductory paragraphs of § 226.6(b) and 226.6(f), and in § 226.7(g), and to further revise § 226.6(b) to require each institution to reapply for participation at a time determined by the State agency, as long as not less than one nor more than three years have elapsed since its last application approval. This gives State agencies the *option* to consider whether the annual renewal of applications represents the most efficient and effective means of carrying out their Program responsibilities, and to consider any length of application between 12 and 36 months. In addition, we proposed that, if an institution submits a renewal application, and the State agency has not conducted a review of that institution since the last agreement was signed or extended, but has reason to believe that such a review is immediately necessary, the State agency has the option of approving the institution's application for a period of less than one year, pending the completion of such a review.

How Did Commenters' Respond to These Proposals?

Overall, commenters were in favor of our interpretation of the NSLA's intent—that State agencies should have the flexibility to require institutions to submit re-applications at any time between one and three years after the previous application. In total, 47 respondents (19 State agencies, 14 sponsors or other institutions, 9 National or State organizations, 3 providers, and 2 commenters whose organizational affiliation was unclear) commented specifically on this provision, and all but one (who wanted a 2-year maximum on applications, although the NSLA now permits up to three years at State agency discretion) were in favor of our interpretation. In addition, we received about 350 general comments commending the proposal's increased flexibility regarding applications, which in part refers to our proposals to lengthen the time between applications and to reduce the amount of information required to be re-submitted on renewal applications.

However, although there was consensus that 12 months should generally be the minimum amount of time between applications, there was some disagreement about the circumstances warranting a State agency's occasional use of a less-than-12-month period before requiring a re-application. As previously mentioned, § 226.6(b)(1)(ii)(C) of the proposed rule required State agencies to establish re-application periods of between 12 and 36 months for renewing institutions except in one instance: When the State agency has not conducted a review of that institution since the last application was approved, but has reason to believe that such a review is immediately necessary. This might occur, for example, when a State agency was reviewing a sponsoring organization's re-application, the sponsor had not been reviewed during the period of its prior application, and the State agency had concerns about the sponsor's management practices.

Six State agency staff commented on this provision, and five of them wanted us to permit State agencies to renew contracts for less than 12 months under other circumstances as well. These five commenters believed that the CACFP regulations should provide State agencies with the flexibility to determine whether there are unusual circumstances warranting the use of a less-than-12-month reapplication period. We appreciate State agencies' desire for maximum flexibility. We do not believe that requiring an institution to re-apply in less than 12 months should be a frequent occurrence. However, State agencies' experience with circumstances warranting more frequent scrutiny of institutions' applications indicate a need for greater flexibility. We are, therefore, convinced that there may be unusual circumstances in which a re-application in less than 12 months could be warranted.

Accordingly, we have removed reference to the single circumstance warranting a reapplication period of less than 12 months, and substituted language clarifying that, under unusual circumstances, a State agency may require an institution to re-apply in less than 12 months. As a result of the re-organization of this section of the regulations by the interim rule published on June 27, 2002, and the further reorganization of § 226.6(b) made in this rule in order to combine the application provisions of the two rules, the provision now appears in the

introductory paragraph of § 226.6(b)(2), with regard to renewal applications, and at § 226.6(b)(4)(ii)(B), with regard to the length of the agreement. Readers should again note that the interim rule published on June 27, 2002, specifically requires at § 226.6(c)(2)(iii)(D) the use of short-term extensions of an agreement when the State agency denies a renewal application or discovers a serious deficiency during its review of an applicant's renewal application.

Did the Department Propose Other Changes Related to the Application Process? What Were Commenters' Responses to These Provisions?

Yes. We proposed six additional changes to the rules governing institution applications. Five of these are discussed below, while the sixth is addressed in part I(B) of this preamble.

(1) Reorganization of application requirements at § 226.6(b) and 226.6(f).—First, we proposed reorganizing § 226.6(b) and 226.6(f), so that § 226.6(b) sets forth the broad requirements for applications submitted by institutions, and § 226.6(f) specifies the frequency at which the institution would be required to update the licensing and approval information, as required by law, as well as other information contained in its original application. Respondents to the proposed rule did not comment on this proposed organizational change, and it therefore appears in this interim rule substantially as it was presented in the proposed rulemaking (except that § 226.6(b) has been further re-organized to accommodate the regulatory distinction between new and renewing institutions that is incorporated in this rule. *See* paragraph (3), below).

(2) Reorganization of other application requirements.—Current Program regulations at §§ 226.6(b), 226.6(f), 226.7(g), 226.15(b), 226.16(b) and 226.23(a) all establish various requirements for Program applications. Current §§ 226.6(f)(1), (f)(2), and (f)(3), and current 226.7(g) expand upon the requirements of § 226.6(b)(1), (b)(5), and (b)(6) by describing the information to be included in the Program agreement and the management plan, and by establishing requirements pertaining to the State agency's review and approval of the sponsoring organization's management plan and the institution's budget. Section 226.15(b) reiterates the annual institution application requirements set forth in § 226.6(b) and requires that nonprofit institutions submit evidence of their tax exempt status in accordance with § 226.15(a). Section 226.16(b) reiterates the annual application requirements pertaining to sponsoring organizations, and § 226.23(a) requires that each institution submit, and that State agencies approve, as part of the annual application process, a free and reduced-price policy statement to be used in all child care and adult day care facilities under the institution's supervision.

We proposed to consolidate more of these requirements in § 226.6(b) so that State agencies and institutions could more easily refer to them during the application process. Respondents to the proposed rule did not comment on this proposed organizational change, and it therefore appears in this interim rule substantially as it was presented in the proposed rulemaking (except that § 226.6(b) has been further re-organized to accommodate the regulatory distinction between new and renewing institutions that is incorporated in this rule. *See* paragraph (3), below).

The proposed modifications to the wording of the application requirements set forth in current § 226.6(b)(1) through (b)(18) were necessitated by the distinctions being drawn between new applicants and renewing institutions. In addition, we proposed to modify current § 226.6(b)(10) (which requires the institution to state on its application whether it wishes to receive a full, partial, or no advance payment) due to PRWORA's change to the requirement that State agencies make advance payments available to Program institutions upon request. Furthermore, under our proposed revision to the application process, State agencies would continue to be responsible for distributing to, and collecting from, participating institutions certain Program information and data, and for ensuring that the CACFP is being operated in compliance with all regulatory requirements. In the proposed rule, these additional State agency responsibilities for information collection or dissemination outside of the application process were grouped into three paragraphs within revised and reorganized § 226.6(f). Section 226.6(f)(1) would delineate responsibilities, including the collection or distribution of certain information, which State agencies would be required to perform annually; § 226.6(f)(2) would list State agency responsibilities to be performed at least once every three years; and § 226.6(f)(3) would enumerate those State agency responsibilities that could be carried out at intervals established at the State agency's discretion, though not more frequently than annually.

(3) Distinction between application requirements for new and renewing institutions.—We also proposed to differentiate between the application requirements for ''new'' and ''renewing'' institutions. We did so because our experience, and that of our State agencies, indicates even greater attention needs to be paid to the applications of those institutions applying for the first time and those re-entering the Program after a lapse in participation, so that they will successfully operate the Program from the start. The need to ensure that new applicant institutions are brought into the Program successfully is best served by a regulation that establishes specific minimum requirements for applications submitted by new institutions, but that allows State agencies greater flexibility in dealing with renewal applications. To that end, the proposed rule included very specific application requirements for new institutions but, for renewing institutions, proposed to specify primarily that the reapplication be evaluated on the basis of the institution's ability to properly operate the Program in accordance with the performance standards, as demonstrated in its management plan (if the institution is a sponsoring organization), its budget, and its prior record in operating the Program.

All 21 respondents who commented on this provision (17 State agencies, 3 sponsors or other institutions, and 1 State organization) were in favor of this change. Because it was necessary to create a regulatory distinction between new and renewing institutions in order to fully implement some of the institution eligibility provisions of ARPA, we have already included these definitions at § 226.2 of the regulations in the interim rule published on June 27, 2002. As a result of this rule's interaction with the 2002 interim rule, this rule also requires that the renewal application include information on the past performance, criminal conviction, and presence on the National Disqualified List of the institution or its principals.

As a further result of the interaction between the two interim rules, and in order to fully incorporate the distinctions between new and renewing institutions in the regulatory text on application review, the specific application requirements now appear at § 226.6(b)(1) and (b)(2) of this interim rule for new and renewing institutions, respectively. This means that the annual regulatory requirements for all applications that currently appear at § 226.6(b)(2) through (b)(18) are reorganized by this rule into requirements for new and renewing institutions at § 226.6(b)(1) and (b)(2), respectively; the requirements for State

agency notification of applicants that currently appear in the introductory paragraph of § 226.6(b) are relocated by this rule to § 226.6(b)(3); and the provisions on agreements that currently appear at § 226.6(b)(1) and 226.6(f)(1) are relocated by this rule to § 226.6(b)(4). Finally, the basic requirement that State agencies establish an application process, and the general requirements for that process, are still included in the introductory text of § 226.6(b).

The movement of the application and agreement requirements formerly located at § 226.6(f) to § 226.6(b) of this rule allows us to use the new § 226.6(f) primarily as a place to specify the intervals at which a State agency must disseminate information to, or collect information from, participating institutions, regardless of the interval at which the State agency has opted to require re-applications. For example, if a State agency chose to require that sponsoring organizations reapply every two years, it would still be required to collect a budget from each sponsoring organization annually, in accordance with § 226.6(f)(1).

(4) Requirement that State agencies consult the National disqualified list.—The results of OIG audits have convinced us that State agencies must be explicitly required to consult the National disqualified list (previously called the seriously deficient list but renamed in the interim rule published on June 27, 2002) when reviewing any institution's new or renewal application for participation. In several instances, OIG found that an institution or individual terminated from CACFP for cause and placed on the National disqualified list by one State was subsequently approved to participate by another State. Therefore, we proposed regulatory language to require a State agency to consult the National disqualified list whenever it reviews any institution's new or renewal application, and to deny the institution's application if either the institution, or any of its principals, is on the National disqualified list. [Please note that the June 27, 2002, interim rule requires State agencies to consult the National disqualified list when sponsors apply on behalf of facilities as well.]

A total of 15 respondents (14 State agencies and one sponsor/institution) commented on this proposed change. While all were supportive of this provision, nine of the commenters expressed reservations about the practicality of using the National disqualified list for this purpose. Their primary objection was that the current hard-copy (paper) version of the list was lengthy, poorly organized, and difficult to use. However, since those comments were submitted, we have addressed this issue by developing an electronic version of the National disqualified list and making it available to State agencies and sponsoring organizations.

Because the consequence of an institution or individual being on the National disqualified list had to be clarified in the first interim rule published on June 27, 2002, as part of the full implementation of ARPA, that rule required (at § 226.6(b)(12)) a State agency to consult the National disqualified list whenever it reviews any institution's application to participate and to deny the institution's application if either the institution, or any individual associated with the institution in a principal capacity, is on the National disqualified list. In the proposed rule published on September 12, 2000, this provision had been placed at § 226.6(b)(1). In this interim rule, which further re-organizes § 226.6(b), that provision will now appear at § 226.6(b)(1)(xi) and (b)(2)(ii) for new and renewing institutions, respectively.

(5) Length of Program agreements between State agencies and institutions.—Under the current regulations at § 226.6(b)(1) and 226.6(f)(1), renewal of an institution's Program agreement is required as part of the annual reapplication process. These provisions were established prior to the legislative change to section 17 of the NSLA that now gives State agencies the option to take applications from participating institutions no less frequently than every three years.

Prior to the enactment of the Goodling Act, the NSLA did not specify the duration of the Program agreement between the State agency and the institution. However, section 102(d) of the Goodling Act amended section 9(i) of the NSLA (42 U.S.C. 1758(i)) to require a State agency that administers any combination of the child nutrition programs (*i.e.*, the National School Lunch, School Breakfast, Child and Adult Care Food or Summer Food Service Programs) to enter into a single permanent agreement with a school food authority that administers more than one of these programs. The NSLA does not specify the duration of the agreement between the State agency and non-school institutions.

Consistent with section 17(d)(2) of the NSLA (42 U.S.C. 1766(d)(2)), which permits State agencies to take applications every three years, we proposed that Program agreements for non-school institutions should be in effect for the period of the institution's application approval (*i.e.*, generally, for a period between one and three years). Therefore, the proposed rule continued to link the length of the Program application and agreement for non-school institutions, while requiring State agencies to enter into permanent agreements with institutions that are schools and that, in accordance with the Goodling Act, operate more than one child nutrition program administered by the same State agency. (Readers should note that the recent legislative change requiring permanent agreements between sponsoring organizations and family day care homes is not addressed in this interim rule, but will be included in a subsequent rulemaking.)

A total of 369 comments were received on this provision. These responses came from 18 State agency commenters, 241 sponsoring organizations and other institutions, 10 State and National organizations, 57 providers, and 43 commenters whose organizational affiliation could not be determined. The vast majority of commenters (363 out of 369) believed that we should reconsider the possibility of having permanent agreements for all types of institutions participating in CACFP. Primarily, these respondents noted that the existence of a permanent agreement was a small but meaningful reduction of paperwork for State agencies and institutions. In addition, some State agency commenters noted the potential difficulty of having as many as three different lengths of agreement in effect for different types of institutions (*e.g.*, permanent where required by the Goodling Act, one-year agreements with sponsoring organizations, and three-year agreements with independent centers) if this provision were implemented as proposed.

The primary reason that we proposed to have agreements expire at the time of application renewal was our belief that not renewing an agreement linked to a denied re-application would be less procedurally burdensome to State agencies than going through the serious deficiency process. However, in drafting the interim rule implementing the CACFP changes mandated by ARPA, we determined that section 17 of the NSLA now requires State agencies to follow the same procedures for denying renewal applications as for terminating a participating program. That is, if a re-applying institution were determined to be seriously deficient during the review of its application, it would still have the opportunity to take corrective action. Then, if corrective action was not taken, the State agency would propose to terminate the institution's agreement, and the institution would have an

opportunity for an administrative review prior to the State's formal termination of the agreement. During this period, the institution's agreement would be temporarily extended for a brief period, until the completion of the administrative review. Similarly, if the State agency denied the renewal application for reasons unrelated to a serious deficiency (*e.g.*, the institution failed to submit all required information in its renewal application), the institution's agreement would be temporarily extended until the completion of the administrative review. Thus, as a result of the changes mandated by ARPA, it is no easier to terminate an institution's participation by denying their renewal application than by terminating their participation in the middle of an agreement. Therefore, there is no compelling reason to link the time interval between application and re-application to the length of the agreement.

Accordingly, this interim rule modifies § 226.6(b)(4)(ii) [proposed § 226.6(b)(2)(ii)] to permit State agencies to enter into permanent agreements with any institution, and to require a single permanent agreement between the State agency and any school food authority that administers more than one child nutrition program. Also, the requirements pertaining to the minimum length of the agreement have been modified to accommodate the possible need for short-term extensions of the agreement during an institution's appeal of an application denial or a proposed termination, in cases where the State agency chooses not to utilize a permanent agreement.

Did You Receive Comments on Any of Your Proposed Changes to the Application or Related Requirements at Current § 226.6(b) and 226.6(f) for New and Renewing Institutions?

Yes. The comments on these proposed changes and our responses are detailed below.

Current § 226.6(b)(1): Program agreement [proposed § 226.6(b)(2)].—*See* the previous discussion concerning the length of the Program agreement entered into between the State agency and institutions.

Current § 226.6(b)(2): Center requirements pertaining to free and reduced-price eligibility [proposed § 226.6(b)(1)(i)(A) and 226.6(f)(1)].— The current regulations at § 226.6(b)(2) require that centers submit current free and reduced-price eligibility information annually. We proposed that new independent centers and new sponsors of centers would continue to be required to submit such information to the State agency with their initial application. In addition, we proposed that collection of this information by the State agency would be required annually at proposed § 226.6(f)(1), to enable the State agency to use this information to construct an annual claiming percentage or blended rate for each participating child care center in accordance with § 226.9(b).

We received two comments on these proposed changes, both from State agencies. One favored the change stating that, since the information is reported at least annually to enable the calculation of a blended rate or claiming percentage, it is not necessary that it be included in a renewal application. A second commenter expressed reservations about the requirement for new centers to include this information with the application, stating that the center would not know its numbers at the time it applied. However, we concluded that this information would have to be known by the center sometime during the application process, prior to the execution of a formal agreement between the center and the State agency, so that accurate claims could be submitted.

Accordingly, we have adopted this regulatory language as proposed in this interim rule. The provision will appear at § 226.6(b)(1)(i) for new institutions. Although renewing institutions will not be specifically required to include this information on their renewal applications, the State agency will be required to collect the information annually in accordance with § 226.6(f)(1)(v), in order to construct a blended rate or claiming percentage for each center.

Current § 226.6(b)(3) and 226.6(f)(11): Family day care home sponsoring organization requirements for submission of enrollment information [proposed § 226.6(b)(1)(i)(B)].— Current § 226.6(b)(3) requires sponsors of family day care homes to annually provide aggregate enrollment information for the homes they sponsor and to confirm the eligibility of providers' children for free and reduced-price meals. We proposed that this requirement would be maintained for new sponsoring organizations of family day care homes. New family day care home sponsors would be required to provide an estimate of their annual aggregate enrollment for planning purposes. Meanwhile, State agencies could choose to include or exclude this requirement from sponsoring organizations' renewal applications. We proposed to delete the annual data reporting requirements pertaining to tier I and tier II homes and meals at current § 226.6(f)(11). The fact that this more detailed information on home participation (children in tier I, tier II, and mixed homes) is now collected monthly, on the FNS–44 form, means that sponsoring organizations already fulfill this requirement.

Again, we received two comments on these proposed changes, both from State agencies. One commenter stated that we should follow the same approach for centers and homes, which we did (new institutions include this information on their initial application, renewing institutions do not do so because the information is already being captured on monthly reports for homes and annually for centers). The other commenter expressed reservations about the requirement for new home sponsors to include this information with the application, stating that the new home sponsor would not know these numbers at the time it applied. However, new family day care home sponsors must have an accurate count of homes in order to make administrative budget projections and to demonstrate that they will have adequate revenue, from administrative reimbursement and any other sources, to be financially viable. Although enrollment information on the children participating in each of these homes will fluctuate, it will nevertheless be available sometime during the application process, either at the time the new sponsor submits an application or, at the least, prior to the beginning of their actual Program participation. The regulation will, therefore, require a new home sponsor to include this information as part of its initial application.

Accordingly, we have adopted this regulatory language as proposed in this interim rule. In this interim rule, which further re-organizes § 226.6(b), the provision will appear at § 226.6(b)(1)(ii) for family day care home sponsors. Renewing home sponsors will not be specifically required to include this information on their renewal applications. They will, of course, be annually required to estimate the number of homes they will sponsor in the coming year in order to revise their administrative budget.

Current §§ 226.6(b)(4), 226.15(b)(5), and 226.23(a): Nondiscrimination policy statement and media release [proposed §§ 226.6(b)(1)(i)(C), 226.6(b)(1)(ii)(B), 226.6(f)(1)(vii), 226.6(f)(3)(iii), and 226.23(a)].— Current §§ 226.6(b)(4), 226.15(b)(5), and 226.23(a) require the submission of a nondiscrimination policy statement, a free and reduced-price policy statement, and a media release as part of the annual application. The wording of this requirement was altered slightly in the

proposed rule to require that each new institution submit its free and reduced-price policy statement, its nondiscrimination policy statement, and a copy of its media release announcing the Program's availability. Because section 722 of PRWORA prohibited institutions from being required to re-submit the policy statement unless it was substantively changed, proposed § 226.6(b)(1)(ii)(B) prohibited State agencies from requiring resubmission of the free and reduced-price policy statement in the renewal application unless the institution made substantive changes to the statement. However, we also proposed that all institutions would continue to be required at § 226.6(f)(1)(vii) to annually submit to the State agency documentation that they had issued a media release which informed the public of the Program's availability, and State agency collection of the nondiscrimination statement would be done on an as needed basis (*i.e.*, only when the institution made substantive changes) under proposed § 226.6(f)(3)(iii). The relocation of these requirements to § 226.6(f) also allowed us to propose deletion of the current requirements at § 226.15(b)(5). Finally, § 226.23(a) proposed to eliminate the requirements for the institution to submit a free and reduced-price policy statement in its renewal application, in order to conform to the requirements of PRWORA.

We received a total of eight comments on these proposals, seven from State agencies and one from a sponsor/institution. All eight commenters approved of these proposed changes, but suggested modifications to the regulatory wording. Seven of these respondents stated that the regulations should explicitly provide State agencies with the option to issue a Statewide media release on behalf of all institutions in the State. We addressed this issue in guidance dated September 18, 1996, but we agree that it also makes sense to include reference to this option in the regulatory language. Another commenter pointed out that, although our preamble discussion spoke of limiting changes to the nondiscrimination statement to times when the institution's policy changed, the regulatory language itself permitted State agencies to ask for an updated nondiscrimination statement on an as-needed basis, which could be as often as annually. We agree with this commenter that there is no compelling reason for the State agency to require this document to be submitted more frequently than the free and reduced-price policy statement (*i.e.*, only when the institution makes changes to the nondiscrimination statement). For that reason, we have removed reference to the nondiscrimination statement that had appeared at proposed § 226.6(f)(3)(iii).

Accordingly, this interim rule incorporates these modifications as described above. In this interim rule, which further re-organizes § 226.6(b), the application requirements for submission of a nondiscrimination statement and a media release by new institutions will appear at § 226.6(b)(1)(iii). This section of the rule, as well as §§ 226.6(f)(1)(vii) and 226.23(d), will also specifically acknowledge that State agencies may either require institutions to issue an annual media release, or may issue a Statewide media release on behalf of all their institutions. State agencies will be prohibited (at §§ 226.6(b)(2), introductory paragraph, and 226.23(a)) from requiring an institution to submit, as part of a renewal application, an updated nondiscrimination statement or a free and reduced-price policy statement, unless the institution makes changes to either statement. This would not, of course, prevent a State agency from asking for copies of these items during reviews or at other appropriate times.

Current § 226.6(b)(5) and 226.6(f)(2): Sponsoring organization management plans [proposed § 226.6(b)(1)(i)(D), 226.6(b)(1)(ii)(A)(1) and 226.6(f)(2)(ii)].—The current requirement at § 226.6(b)(5), under which sponsoring organizations must annually submit a complete management plan as part of their application, was moved to proposed § 226.6(b)(1)(i)(D), governing the submission of applications by new institutions, as was the substance of current § 226.6(f)(2), which details the specific elements which must be included in a sponsor's complete management plan. Because it is such a critical document in establishing a sponsoring organization's ability to meet the statutorily-mandated eligibility criteria of financial viability, administrative capability, and internal controls for accountability, we also proposed to specifically require that a complete management plan again be submitted as part of sponsoring organizations' renewal applications. This requirement was at proposed §§ 226.6(b)(l)(ii)(A)(l) and 226.6(f)(2)(ii).

Because of this proposal to require submission of a complete management plan with the renewal application, we proposed to leave more frequent submissions of a partial or complete management plan to the State agency's discretion, and to include the requirement to submit the complete management plan as part of the renewal application at revised §§ 226.6(b)(2)(i) and 226.6(f)(2)(ii). This means that each State agency would be required to collect a complete management plan from sponsors no less frequently than every three years, but could require submission of the complete management plan as often as annually. The only portion of the management plan that this rule requires to be updated annually is the sponsoring organization's administrative budget, as discussed below. Of course, justification for changes to a sponsoring organization's budget assumptions might also require amendments to other portions of the management plan dealing with staffing, projected growth or decline in the number of facilities sponsored, or other factors.

We received no specific comment on this reorganization or on the requirements pertaining to the periodic submission of management plans. Accordingly, this interim rule incorporates the changes proposed with regard to State agency review of management plans. Because of the further reorganization of § 226.6(b) in this interim rule, these provisions now appear at §§ 226.6(b)(1)(iv), 226.6(b)(2)(i), and 226.6(f)(2)(ii).

Current §§ 226.6(b)(6), 226.6(b)(18)(i)(C), 226.6(f)(3), 226.7(g), and 226.15(b)(3): Institutions budgets [proposed §§ 226.6(b)(1)(i)(E), 226.6(b)(1)(ii)(A)(1), 226.6(f)(1)(vi), 226.6(f)(3)(i), and 226.7(g)].—Current §§ 226.6(b)(6) and 226.15(b)(3) require institutions to annually submit budgets with their application. Current §§ 226.6(b)(18)(i)(C), 226.6(f)(3) and 226.7(g) require the State agency to review and approve budgets; to limit the allowable administrative costs of family day care home sponsoring organizations to the administrative costs in their approved budgets; to limit center sponsors' administrative costs to 15 percent of the meal reimbursement estimated to be earned by its sponsored centers; and to establish administrative cost limits for other institutions [*e.g.*, independent centers and sponsors of centers] as it sees fit.

We proposed to continue requiring, at proposed § 226.6(b)(1)(i)(E) and (b)(1)(ii)(A)(*1*), that both new and renewing institutions administrative budgets for State agency approval with their applications. In addition, we proposed at § 226.6(f)(1)(vi) that revised budgets be submitted for State agency review and approval by all sponsoring organizations each year, and at

proposed § 226.6(f)(3) that the budgets of independent centers be submitted as frequently as the State agency deems necessary. [**Note:** routine adjustments to annual budget projections are reviewed by State agencies for all CACFP institutions on an ongoing basis, in accordance with § 226.7(g)]. Finally, the reference to annual budgets currently found in § 226.7(g) would be deleted, since budgets for independent centers would no longer be required on an annual basis. However, all budgets, whenever submitted, would be required to demonstrate the institution's ability to manage Program funds in accordance with this part, OMB circulars, FNS Instruction 796–2, and the Department's Uniform Financial Management Requirements.

Finally, to underscore the importance of the State agency's review of the institution's budget, we also proposed to specifically state that all approved costs in the budget must be necessary, reasonable, allowable, and allocable in accordance with Department financial management regulations, OMB circulars, and the CACFP Financial Management Instruction. The audits conducted by OIG revealed State agency review of institution budgets to be a particular weakness in some States, and it is important to emphasize the purpose of the budget review and the budget amendment process in the regulatory text itself. [**Note:** several references to ''administrative budgets'' in the proposed rule have been changed to ''budgets'' in this interim rule, to clarify that State agencies must also review the operating cost budgets of independent centers, in order to ensure that the center has properly planned a food service for the number of children and meals it proposes to serve.]

We received a total of 383 comments on this provision, although 357 of these were comments that we inferred to be about the budget submission and budget review process. These 357 respondents stated, in reference to our overall changes to the application process at § 226.6, that the regulations should clarify that the authority and responsibility for managing day-to-day Program operations, including internal decision-making such as staff hiring, is retained by the sponsoring organization, unless the sponsoring organization is operating under a corrective action plan. Many of these commenters further stated that, once sponsoring organizations have demonstrated their administrative capacity, they should be expected to manage their own programs.

This comment appears to reflect opposition to the requirements for submission of information needed to assess an institution's viability, capability, and accountability through its management plan and/or budget. This raises the concern that, prior to this, the administering agency in some States was not adequately overseeing sponsor operations, especially in its review of a sponsor's management plan and budget. Additionally, we are also concerned with the commenters' apparent belief that close State agency oversight of a sponsoring organization or any institution participating in CACFP constitutes interference with the institution's management prerogatives.

As subgrantees of a Federal program administered by State agency grantees, sponsoring organizations should expect that State agencies will closely monitor their expenditure of public funds. Although many sponsoring organizations are private entities, their private status does not invalidate their responsibility for proper use of Federal funds. The State agency has every right, and the clear responsibility, to closely oversee the sponsor's use of pass-through Federal funds. How the State agency chooses to accomplish its oversight responsibility will vary, and will be a function of management style, State resources, and other factors, including the State agency's experience with CACFP institutions that have not properly managed the CACFP. There is nothing in the proposed rule, or in this interim rule's requirements pertaining to State agency review of applications, that constitutes interference with a sponsor's ability to manage its day-to-day operations. There are simply Program requirements that must be implemented at the State and local level, in order to ensure the proper delivery of Program meals to children and the proper expenditure and management of Federal funds.

Of the remaining 26 comments on this provision, 21 were from State agencies and five were from sponsors or other institutions. Seven respondents (5 State agencies and 2 sponsors/institutions) supported all of the proposals, while the remainder requested modifications to the regulatory language we proposed. These 19 suggested changes included: four commenters who believed that sponsors of affiliated centers (that is, sponsored centers which share the same legal identity as the sponsoring organization) should be required to submit a budget every three years, while sponsors of unaffiliated centers should be required to submit budgets annually, like sponsors of family day care homes; eight commenters who believed that independent centers and sponsors of affiliated centers should never be required to submit an administrative budget, because they did not receive a specific portion of the meal reimbursement to cover their administrative costs; three commenters who stated that the references to necessary costs in the regulatory language concerning budgets established an arbitrary and subjective standard, and were not consistent with Departmental and government-wide requirements that budget items be reasonable, allowable, and allocable; and four other commenters who requested that we require budgets to include projected CACFP earnings and the source of funding for Program costs over and above that covered by the CACFP reimbursement, and that we establish a percentage threshold below which an institution would not be required to file a budget amendment.

It is inappropriate to establish separate regulations for budgets submitted by sponsors of affiliated and unaffiliated centers at this time. Therefore, this rule continues to require that all sponsoring organizations (whether sponsors of homes or of affiliated or unaffiliated centers) annually submit an administrative budget. However, we agree that there was some ambiguity with regard to the requirement for renewing institutions to submit a budget, since we also proposed at § 226.6(f)(3)(i) that State agencies could require budgets from renewing independent centers (which are also institutions) as often as they saw fit. This interim rule will therefore clarify that all renewing sponsors are required to submit budgets with their renewal applications, but that State agencies are free to establish less frequent requirements for budget submission by independent centers (consistent with § 226.6(f)(3)(i)).

With regard to the reference to necessary costs, several commenters incorrectly stated that Office of Management and Budget Circulars defining cost principles for governments and nonprofit organizations do not mention necessity as a factor to be assessed in determining allowability of cost. In fact, Circular A–87, parts (C)(1)(a) and (C)(2)(a), and Circular A–122, part (A)(3)(a), both define allowable costs as costs that are necessary and reasonable. Therefore, this interim rule incorporates the regulatory language proposed at § 226.6(f)(1)(vi) requiring sponsors' budgets to include enough detailed information to allow the State agency to determine the allowability, necessity, and reasonableness of all proposed expenses.

Finally, we agree with the commenters who suggested that the requirements for the administrative

budget should explicitly refer to estimated CACFP earnings, as well as proposed expenditures, and the appropriate change has been made to §§ 226.6(b)(1)(iv)(C) and 226.6(f)(1)(vi) in this interim rule. We therefore incorporated language stating that the sponsor's administrative budget should include information on revenues derived from CACFP administrative reimbursement, as well as other sources, to illustrate how projected Program administrative expenses will be funded.

Accordingly, this interim rule incorporates the changes proposed with regard to budgets, as discussed above. Because of the further reorganization of § 226.6(b) in this interim rule, these provisions now appear at § 226.6(b)(1)(iv)(C), (b)(1)(v), and (b)(2)(i).

Current §§ 226.6(b)(7), 226.15(b)(4), and 226.16(b)(3): Licensing and Approval Information [proposed § 226.6(b)(1)(i)(F) and 226.6(f)(1)(viii)].—The current application requirements at §§ 226.6(b)(7), 226.15(b)(4), and 226.16(b)(3) require documentation of licensing or approval to be submitted each year. As previously noted, section 17(d)(2)(B) of the NSLA requires that State agencies exercising the option to take applications at other than annual intervals are nevertheless required to annually confirm that each institution is in compliance with the licensing or approval provisions of section 17(a) of the NSLA (42 U.S.C. 1766(d)(2)(B)). Therefore, the proposed rule continued to require (at proposed § 226.6(b)(1)(i)(F)) that new independent centers and facilities sponsored by new institutions submit documentation of their licensure or approval. The Department also proposed at § 226.6(f)(1)(viii) that State agencies be required to annually obtain from institutions or facilities the licensure or approval status of any institution or facility which is required to be licensed or approved.

We received two comments (one from a State agency and one from a sponsor) on these proposals. One commenter asked that we permit the use of exception lists to confirm continued licensing or approval.

We had specifically mentioned in the preamble to the proposed rule that there are a variety of ways that State agencies may comply with this requirement. In some States, the State CACFP agency and the State licensing agencies compare automated lists to find CACFP providers who are no longer licensed. In order to underscore that there are a number of acceptable means of confirming licensing or approval, we have modified the regulatory language at § 226.6(f)(1)(viii). The other commenter stated that licensing should only share information with State agencies that was relevant to the institution or facility's participation in the CACFP. This is a matter to be resolved at the State level between the agencies responsible for licensing and CACFP.

Accordingly, this interim rule incorporates the changes previously proposed at §§ 226.6(b)(1)(i)(F) and 226.6(f)(1)(viii), with the aforementioned modification to § 226.6(f)(1)(viii). In this interim rule, which further re-organizes § 226.6(b), the provision will appear at § 226.6(b)(1)(vi) for new institutions.

Current § 226.15(a) and (b)(1): Tax-exempt status information [proposed § 226.6(b)(1)(i)(G) and 226.6(f)(3)(iv)].—The current application requirement at § 226.15(b)(1) pertaining to the annual demonstration of tax-exempt status simply reiterates the requirement at § 226.15(a) that all private nonprofit institutions must annually demonstrate their tax-exempt status. As part of our reorganization of institution application requirements, we proposed to relocate this requirement at new § 226.6(f)(3), meaning that State agencies could require this information to be submitted by renewing institutions on an as needed basis, but no more frequently than annually. We received no comments on this proposed relocation and have incorporated the change in this interim rule.

We also proposed that this requirement would be retained for new sponsors at proposed § 226.6(b)(1)(i)(G), and that the periodic resubmission of such documentation should be at the State agency's discretion (§ 226.6(f)(3)(iv)). However, the interim rule published on June 27, 2002, inadvertently dropped this requirement from the application requirements at § 226.6(b).

Nine State agency commenters responded favorably to this proposed change. We are, therefore, incorporating the changes as proposed. In this interim rule, which further re-organizes § 226.6(b), the provision concerning the tax-exempt status of new institutions is re-inserted into the regulations and will appear at § 226.6(b)(1)(vii).

Current §§ 226.6(b)(8) and 226.15(b)(6): Proprietary center requirements [proposed § 226.6(b)(1)(i)(H) and 226.6(f)(3)(v)–(vi)].—Current regulations at §§ 226.6(b)(8) and 226.15(b)(6) set forth the application requirements for proprietary centers. Such centers are permitted to participate in a given month only if at least 25 percent of their licensed capacity or enrolled participants receive funding under title XX of the Social Security Act (42 U.S.C., 1397, *et seq.*) We proposed to retain the requirement that a new applicant proprietary center document its eligibility at proposed § 226.6(b)(1)(i)(H). However, no similar requirement was included for renewing institutions since, as a condition of their eligibility, such centers are required to document compliance with the 25 percent requirement each month. Therefore, we proposed to place the periodic resubmission of such documentation at revised §§ 226.6(f)(3)(v) and 226.6(f)(3)(vi), since the State agency is already receiving this information on a monthly basis as part of the claiming process.

We received a total of four comments on these proposals, two from State agencies and two from sponsors. Two of these commenters supported the proposed changes, while the two commenters who opposed the changes misunderstood their intent, believing that we had eliminated the requirement for monthly documentation of eligibility on the claim. In fact, it is because State agencies receive monthly documentation of eligibility on the claim that there is no need to address this matter in any renewal application materials; however, a State agency that wishes to require the periodic resubmission of this information may do so in accordance with § 226.6(f)(3).

Accordingly, this interim rule incorporates the proposed changes. In this interim rule, which further re-organizes § 226.6(b), the provision will appear at § 226.6(b)(1)(viii) for new institutions.

Current §§ 226.6(b)(9), 226.6(f)(5) and (f)(6), and 226.6(h): Information on commodities [proposed § 226.6(b)(1)(i)(J), 226.6(f)(3)(ii), and 226.6(h).—We proposed that the current application requirement at § 226.6(b)(9), under which institutions are to annually indicate their preference for commodities or cash-in-lieu of commodities, would be included in the requirements for new applicants at proposed § 226.6(b)(1)(i)(J) and in proposed § 226.6(f)(3)(ii) as information that State agencies could subsequently require to be submitted on an application on an as-needed basis. This would provide State agencies with the flexibility to allow institutions to submit additional information only when their initially-stated preference had changed. The requirement for annual submission of this information by institutions at current § 226.6(h) would be deleted by removing the first sentence and by

making conforming changes to the remainder of the paragraph. We also proposed that the current requirements for State agencies to annually inquire about an institution's preference for commodities or cash-in-lieu of commodities, and to annually notify all institutions of foods in plentiful supply, be moved from § 226.6(f)(5) and (f)(6) to revised § 226.6(h).

We received eight comments on these proposed changes from six State agencies. Two State agencies (four of the commenters) supported all of the proposed changes, while the other four made suggestions for changes to the proposed regulatory language. All four of these commenters suggested modifications to proposed § 226.6(h), which would require State agencies to annually provide information to all institutions on foods available in plentiful supply. These commenters either wanted the requirement eliminated, in favor of having those institutions interested in receiving surplus commodities contact the State agency, or making the notification discretionary rather than mandatory. In addition, one commenter objected to the requirement that new institutions state their preference for commodities or cash-in-lieu of commodities in their initial application, because he believed that ''most organizations are not capable of receiving commodities''.

However, current law at section 17(h)(1) of the NSLA requires State agencies to make annual determinations regarding the amount of commodities or cash in lieu of commodities needed by CACFP institutions in that State. The State agency's determination of whether to request cash in lieu of some or all of their commodity entitlement must, according to the law, base that decision on the preferences of participating institutions. Participating institutions can only make an informed decision about their commodity preferences if they know which commodities are in plentiful supply. Therefore, because of these statutory requirements, the Department is unable to eliminate the requirement for annual notification by the State agency of foods available in plentiful supply and will in this interim rule make only those changes that were proposed—to require new institutions to make an initial statement of their commodity preference in their Program application, then to permit State agencies to collect additional information from institutions on their commodity preferences on an as needed basis, whenever those preferences change.

Accordingly, this interim rule incorporates the proposed changes at § 226.6(h). In this interim rule, which further re-organizes § 226.6(b), the requirement for new institutions to indicate their preference for commodities or cash-in-lieu of commodities appears at § 226.6(b)(1)(ix).

Current § 226.6(b)(10): Advance payment information.—Section 708(f)(2) of PRWORA amended section 17(f)(4) of the NSLA (42 U.S.C. 1766(f)(4)) by making payment of advances optional at the State agency's discretion. Because a State agency could elect to issue no advance payments whatsoever, we proposed to remove all references to advances from the application requirements. Instead, we proposed to relocate the current requirement at § 226.6(b)(10) governing the institution's election to receive advance payments to § 226.6(f)(3)(vii), meaning that State agencies electing to distribute advances could require eligible institutions to state their preferences regarding advances on an ''as needed'' basis, but no more often than annually.

We received no comments on our proposal to remove this provision from § 226.6(b). Substantive comments on the statutory change are addressed in part IV(A) of this preamble, below.

Current § 226.6(f)(4): Procurement requirements [proposed § 226.6(j)]. Current § 226.6(f)(4) requires State agencies to annually determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of § 226.22. Because this requirement has nothing to do with the institution application process, we proposed to simply relocate the provision from § 226.6(f)(4) to § 226.6(j) and to delete the reference to annual determinations.

We received two comments from State agencies on this proposed change. One commenter favored the change, while the other stated that there should be greater uniformity in procurement requirements between CACFP and the National School Lunch Program. This requirement (to ensure that all food service management company contracts are competitively procured) is, in fact, uniform in both the CACFP and the NSLP, since both Programs are subject to government-wide requirements, codified in Departmental regulations at 7 CFR part 3016, that grantees and subgrantees promote competition in all procurements to the maximum extent practicable. Accordingly, we have incorporated the proposed change at § 226.6(j) of this interim rule.

Current § 226.6(f)(7) through (f)(10): Other State agency responsibilities [proposed § 226.6(f)(1)(i) through § 226.6(f)(1)(iv) and § 226.6(f)(3)(viii)].—We proposed to relocate current § 226.6(f)(7) through (f)(10), which deal with State agency responsibilities regarding information made available to pricing programs, the conduct of verification, and implementation of the two-tiered reimbursement system for family day care homes. Current § 226.6(f)(7), (f)(9), and (f)(10) were proposed to be relocated at proposed §§ 226.6(f)(1)(i) through 226.6(f)(iv), since they relate to information which the State agency must provide annually to some institutions. Current § 226.6(f)(8), which relates to the State agency's collection of verification as part of a review, was proposed to be moved to § 226.6(f)(3)(viii), and required that verification be conducted as part of State agency reviews of institutions mandated at § 226.6(l).

We received no comments on this proposed reorganization of information. Accordingly, this interim rule incorporates these changes as proposed. Due to the publication of the earlier interim rule on June 27, 2002, the latter provision is now located at § 226.6(m)(4).

B. State Agency Notification to Applicant Institutions

Prior to 1996, there were three requirements pertaining to the notification of applicant institutions in section 17(d)(1) of the NSLA. State agencies were required to: Notify the institution in writing of its approval or disapproval within 30 days; notify the institution in writing within 15 days if an incomplete application was submitted; and, if an incomplete application was submitted, provide technical assistance to help the institution complete its application.

Section 708(c) of PRWORA amended section 17(d)(1) of the NSLA by removing the requirement that State agencies provide an institution with technical assistance when the institution submitted an incomplete Program application. Then, section 107(d) of the Goodling Act amended section 17(d)(1) of the NSLA to require that a State agency notify an institution of its approval or denial within thirty days after receipt of a complete application. This gave a State agency 30 days from its initial receipt of a complete application to either approve or deny the application. The Conference Report accompanying the bill (House Report 105–786, October 6, 1998) encouraged State agencies to inform applicants as quickly as possible if an application was incomplete upon receipt. The September 12, 2000, rulemaking proposed to incorporate

these statutory changes at proposed § 226.6(b)(1)(iii).

We received a total of 22 comments on these provisions (19 from State agencies, one from a sponsor/institution, one from a State organization, and one from a commenter whose organizational affiliation could not be determined), 20 of which supported these changes. The two commenters who suggested deadlines for actions that conflicted with the NSLA were apparently not aware that we have no discretion to modify these statutory provisions. Accordingly, these changes are incorporated in this interim rule. Due to the further reorganization of § 226.6(b) in this interim rule, the provisions have been incorporated into the regulations at § 226.6(b)(3).

Part II. State Agency and Institution Review and Oversight Requirements

What Were OIG's Recommendations for Changes to the Monitoring Requirements?

As discussed above, OIG's national audit of the family day care home component of CACFP made a number of recommendations for changes to State agency and sponsoring organization monitoring requirements. Among these were recommendations to require that:

- Some or all sponsor reviews of day care homes and State agency monitoring visits to homes be unannounced;
- Routine parental contacts be made as part of State agency and sponsor monitoring of day care homes, in order to verify children's Program participation;
- Sponsors and day care providers keep more detailed information on enrollment forms, including a record of each child's normal hours of care and normal places (*i.e.*, at day care, school, or home) of receiving meals throughout the day;
- Minimum sponsor review requirements—including reconciliation of enrollment, attendance, and meal claim data—be established;
- Sponsors routinely perform certain edit checks on all meal claims submitted by their facilities; and
- Minimum standards for State agency review coverage be established.

This audit made two additional recommendations for changes to general oversight requirements that are not specifically included in the regulatory language dealing with monitoring. These include recommendations that:

- Program regulations clarify that facilities must not be reimbursed for improper claims; and that
- The Department take steps to minimize the possibility of State agencies paying claims to day care homes that were based on the provider's improper participation in the Food Stamp Program.

After the release of this national audit, OIG informally recommended that the Department:

- Address the matter of placing seriously deficient family day care homes on a National list, much as the Department currently maintains a list of seriously deficient institutions; and
- Give State agencies explicit regulatory authority to limit the transfer of family day care home providers from one sponsoring organization to another.

Finally, the ''Operation Kiddie Care'' audit made an additional recommendation related to sponsor monitoring: That the regulations prescribe a maximum number of facilities for which each sponsor monitor would have responsibility.

What Is FNS's Response to These Recommendations?

We largely concur with these formal and informal recommendations. Implementation of these recommendations will aid our ongoing efforts to improve Program management. Those audit and other informal recommendations that subsequently were statutorily mandated by ARPA have already been addressed in the interim rule published on June 27, 2002. The remaining seven recommendations are dealt with in this part of the preamble, as are several discretionary changes that we proposed with regard to sponsor review of facilities.

A. Household Contacts

What Did the OIG Audit Say About Household (Parental) Contacts?

OIG's audit of family day care home sponsoring organizations revealed that fewer than one in six sponsors sampled made parental contacts a part of their normal provider reviews. They recommended that household contacts be made a routine part of a sponsoring organization and/or State agency's review protocols in order to confirm their child's enrollment and attendance, and the specific meals routinely received by the child, at the family day care home being reviewed.

Did USDA Propose To Require That Sponsoring Organizations or State Agencies Make Household Contacts?

We believe that it would be inappropriate to mandate that household contacts be made routinely. However, we were (and remain) concerned with OIG's finding that block claiming (*i.e.*, claiming the same number and type of meals served every day) by child care facilities often goes unchallenged by sponsoring organizations. Therefore, we proposed a system requiring that both sponsoring organizations and State agencies use household contacts under certain circumstances (specifically, when either determined that facilities had submitted block claims for 10 or more consecutive days, or had claimed an inordinately high number of meals for more than one day in a claiming period) in order to detect and deter the type of fraud documented in recent audits and investigations.

How Did Commenters Respond to These Proposals?

We received more comments (515) on various aspects of our household contact proposals than we did on any other provision in the proposed rule. (Note: comments on the related topic of requiring sponsoring organizations to identify and review block claims as one type of claims edit check are discussed in part II(D), of this preamble, below). Among State agencies, institutions, and providers, there was almost universal agreement that our proposed system of household contacts was overly prescriptive and complex, and that implementation would be administratively difficult and costly for both State agencies and sponsoring organizations. Generally, most commenters also believed that the system, as proposed, would result in the conduct of far too many household contacts, requiring large administrative expenditures while not efficiently targeting or identifying those providers whose claims were most likely to be inaccurate.

More specifically, the vast majority of these commenters felt that it would be more beneficial to permit sponsoring organizations and/or State agencies to develop their own systems for making household contacts, both in terms of the findings or events that would cause a household contact to be conducted, and the procedures to be used in making household contacts. Many of these commenters mentioned that a trigger, or threshold, of 10 consecutive days of identical claims was often not indicative of an inaccurate claim. These commenters stated that, for a variety of reasons, providers in some areas regularly accept sick children in care, thus making it far more likely (especially if the home cares for a small number of children) to have identical claims for extended periods of time.

While stressing that their preference was to have sponsoring organizations or State agencies develop a household

contact policy appropriate to their particular circumstances, 349 commenters also offered specific ideas for possible modifications to the household contact system that we had proposed. Many of these comments suggested using a longer period of block claiming (generally 60 days, though a few suggested 30 or 90 days) to trigger a required household contact. Commenters also suggested changes to the requirements for the number of households to be contacted; the timing of, and the requirements for, unannounced visits when parents failed to respond or failed to corroborate the claim; and the means of notifying and contacting the parents of children in care.

In addition, 29 comments were received from 20 State agencies and nine sponsoring organizations on the proposed requirement for State agencies to conduct household contacts in the periodic sample of facilities reviewed as part of the State agency's review of a sponsor. All 29 commenters were opposed to this proposal. Commenters believed either that State agencies should never conduct household contacts, or that a State agency should only conduct household contacts under circumstances defined by the State agency.

In consideration of these concerns, and consistent with promoting greater flexibility for State agencies in their management of the Program, we have modified our proposals relating to the conduct of household contacts. Household contacts provide a means of confirming children's enrollment and attendance in care, which is critical to ensuring the integrity of the CACFP meal claim. However, the commenters have convinced us that there are many effective ways of establishing a household contact system, and that each State agency is in the best position to determine when a household contact must be made, either by the State agency or by the sponsors in that State, and the procedures for conducting household contacts. Because the development of these systems by the State agency will take time, we have delayed implementation of this provision until April 1, 2005. Therefore, this interim rule requires that:

- By April 1, 2005, each State agency develop a system that defines the circumstances under which the State agency will make, and the procedures it will use for conducting, household contacts as part of the oversight of independent centers, or in its sample reviews of sponsored facilities (§ 226.6(m)(5));
- By April 1, 2005, each State agency develop a system that defines the circumstances under which sponsors must make, and the procedures sponsors must use in conducting, household contacts as part of their review and oversight of participating facilities (§ 226.6(m)(5));
- Sponsors comply with the requirements of the household contact system established by the State agency (§ 226.16(d)(5)); and
- The State agency include in its review of sponsors an evaluation of the sponsor's implementation of this requirement (§ 226.6(m)(3)).

Although we considered the possibility of requiring State agencies to submit these household contact systems to us for prior approval, we ultimately decided that the best way for us to assess the systems was in the context of the total review of State agency operations that occurs during a management evaluation. We are taking this approach in order to provide State agencies with maximum flexibility in adapting their household contact systems to fit the particular needs of sponsors and facilities in their State. However, we will require that, by April 1, 2005, State agencies document these systems in writing and submit them to Food and Nutrition Service (FNS) regional offices. Once a State agency's household contact system is operational, we will be able to determine if it is adequate to help detect the existence of inflated facility meal counts. Based on the results of our management evaluations, we will, if necessary, provide assistance to State agencies to help ensure that their household contact systems achieve this important end. In addition, we will analyze the management evaluation findings to determine whether they provide an effective means of verifying children's attendance and whether the final rule should include further requirements related to household contacts.

As a result of the above changes, this interim rule adds a definition of ''household contact'' at § 226.2 that specifies the purpose of household contacts conducted in accordance with this broad regulatory authority, but does not specify when or how household contacts should be made. This will allow State agencies to determine when household contacts must be made (whether by the State agency itself or by its sponsors), and the procedures to be employed when making household contacts.

For the purpose of implementing the requirement that sponsoring organizations use block claiming as a mandatory edit check, we have also added a new definition of ''block claim'' to § 226.2 of the regulations (see discussion in part II(D) of the preamble, below); however, if a block claim is discovered in an edit check, this interim rule requires that an unannounced visit, rather than a household contact, be conducted.

Accordingly, this rule amends the definition of ''household contact'' at § 226.2; requires State agencies to establish systems for making household contacts at the institution and facility levels, and to review sponsors' implementation of these systems (at § 226.6(m)(5) and (m)(3), respectively), as discussed above; and requires sponsors (at § 226.16(d)(5)) to comply with the requirements of the household contact system established by the State agency.

B. Enrollment Forms

What Are the Current Regulatory Requirements Pertaining to Children's Enrollment Forms?

The CACFP is primarily designed to provide nutritious meals to children enrolled for care in licensed or approved child care facilities. Parents or guardians of children in care generally fill out an enrollment form that gives the child care provider legal permission to provide care and often includes explicit permission to obtain emergency medical care for the child. Program regulations at § 226.15(e)(2) and (e)(3) require that each institution keep a record of each child's enrollment, as well as copies of income eligibility forms used to establish a child's eligibility for free or reduced-price meals in child care centers or for tier I reimbursements in mixed tier 2 family day care homes. Section 226.16(a) specifically extends these requirements to sponsoring organizations, while §§ 226.17(b)(7), 226.18(e), 226.19(b)(8), and 226.19a(b)(8) state that child care centers, family day care homes, outside-school-hours care centers, and adult day care centers, respectively, must maintain documentation of enrollment for each Program participant. (Please note that there is no requirement for formal enrollment of children served in the at-risk or homeless components of CACFP. Further discussion of this issue is included in this part of the preamble, below.)

What Did the OIG Audit Find Regarding Enrollment Forms?

In its audit of family day care homes, OIG noted several serious problems related to the information contained on enrollment forms. The audit noted that

there is no current requirement that enrollment forms be updated on a regular basis or that they contain an indication that the child's parents had seen the form and verified its accuracy. The lack of such requirements was identified as a factor contributing to the inflation of meal counts by facilities. Without regular updates of enrollment forms by parents, providers can more readily claim meals for children no longer in care. This makes it much more difficult for sponsors and State agencies to identify inflated meal counts. OIG also noted that other useful information—such as a record of each child's normal hours of care and the place (*i.e.*, at day care, school, or home) where the child normally receives each meal service throughout the day—is not required to be on the enrollment forms. The audit recommended that enrollment forms be updated annually, be signed by parents, and include information that would assist reviewers in determining the current number of children enrolled and in attendance at the home, and the number and type(s) of meals normally received by each child while in care.

What Did the Department Propose in Response to These Recommendations?

We proposed requiring that all enrollment forms capture certain information in order to facilitate sponsoring organization reviewers' comparison of current enrollment against attendance records and meal claims. Specifically, we proposed to require that the enrollment form include the child's normal hours in care and the meals usually received in care by that child, and that the form be updated annually and signed by a parent at each update. We did not propose any changes to § 226.19a(b)(8) concerning enrollment forms for participants in adult day care centers.

What Comments Did the Department Receive on These Proposed Requirements?

We received a total of 63 comments on our proposed changes to the requirements for enrollment forms: 31 from State agency commenters in 24 different States; 23 from sponsoring organizations or other institutions; one from a national organization; one from a family day care home provider; and seven from commenters whose affiliation could not be determined.

Twenty-two (22) commenters expressed complete support for the proposed changes (eight State agency commenters from seven States, six commenters from sponsoring organizations or other institutions, one from a provider, and seven from individuals whose institutional affiliation could not be determined). In addition to expressing general support for our proposals, a number of these commenters noted that these requirements were already in place in their States or organizations, and that they constituted an important part of their system of claim reconciliation. Several sponsor commenters suggested that semi-annual enrollment updates might be even more beneficial.

Twenty-five (25) commenters were completely opposed to these proposals, including 10 State agency commenters from seven States and 15 sponsoring organization commenters. Generally, those who completely opposed these proposals did so because they felt that annual updating would entail too much cost or administrative burden for sponsoring organizations, and/or that the information on the children's normal days in care and meals received would be of little or no use. Many of these commenters feared that providers would simply instruct parents to state that their child might receive any meal service on any day so that a reviewer would have no idea as to the child's normal hours of care. Commenters also stated that parents' schedules were far too variable to be meaningfully described in terms of a normal routine.

The other 16 commenters (13 State agency commenters from 11 States, one national organization, and two sponsoring organizations) uniformly supported annual updates to the enrollment form signed by a parent, and believed that this process was important to Program integrity. However, these commenters all believed that the specification of normal days and meals received in care would not be useful, and usually cited as reasons for this belief the same arguments (variability in parent schedules or providers instructing parents to fill out the form in a particular manner) as those who opposed all of the changes. Three of the State agency commenters also stated that they believed the proposed requirements to be potentially burdensome and unnecessary for the child care center-based component of CACFP

Among the 63 comments received, seven (7) State agency commenters from four States also mentioned that their States' licensing authorities already required that certain information be captured on enrollment forms. These commenters stated that they were unable or unwilling to request that the licensing authority modify its form to capture the additional information that we had proposed on normal days in care and meals received.

What Was the Department's Intent With Respect to the Use of Enrollment Information To Reconcile Claims?

Some commenters who opposed these proposed changes seemed to believe that, because we mentioned the usefulness of this information for sponsor reviewers when conducting the newly-required 5-day claim reconciliation, we intended the reviewer to assess an overclaim whenever a meal was claimed outside of a child's normal hours of care, or to require that sponsoring organizations establish an automated system to check meal claims against enrollments on a daily basis for each child. In addition, some commenters seemed to believe that we were proposing to require a parent to modify the form every time their schedule changed.

In fact, we intended only to require that the enrollment form be updated on an annual basis, or more frequently at the discretion of the sponsor or, with Food and Nutrition Service Regional Office approval in accordance with § 226.25(b)), the State agency. We did not intend or expect this information to be reconciled perfectly on each review, nor did we intend to establish a Federal requirement that sponsoring organizations make daily comparisons between enrollment information and meals claimed. Rather, we envisioned that the expanded information on the enrollment form would primarily serve as a means of indicating potential concerns (what we have referred to in training as a ''red flag'') for sponsor reviewers during on-site reviews. If the 5-day reconciliation conducted as part of a facility review revealed that meals were regularly being claimed for children who were not enrolled and/or in attendance, sound Program management would require the reviewer to take additional steps to verify the claim's accuracy (*e.g.*, expanding the claim reconciliation beyond five days, scheduling the provider for an additional unannounced visit, and/or initiating household contacts). Similarly, the claiming of meals for children no longer enrolled will be far easier to detect in a facility review if both the sponsoring organization and the facility are required to have annually updated enrollment information on file for each child.

What Proposals Will You Implement in This Interim Rule?

Based on the above clarification, we believe it is prudent to require both annual updating of the enrollment form with parental signature and the inclusion of additional information

(normal days in care and meals received) on the enrollment form. In order to take into account the potential paperwork burden of processing large numbers of additional enrollment forms (this burden could occur for larger sponsoring organizations that currently have no system for annual updates), and to provide State agencies with time, where necessary, to coordinate with licensing authorities regarding changes to the enrollment form, we will delay full implementation of this provision until April 1, 2005. Between now and April 1, 2005, sponsoring organizations can phase in the requirement so that enrollment forms on file for all children as of April 1, 2005, are no more than 12 months old.

Given the Amount of Time That Will be Required for Sponsors To Gather This Information on an Annual Basis, Will the Department Consider This Function to be Part of the Monitoring Function for Purposes of Establishing a Monitor-Facility Ratio in Accordance With § 226.16(b)(1)?

Yes. Because the primary purpose of our proposed changes is to improve facility monitoring, and to offset some of the administrative impact of updating of the enrollment form, we will permit sponsoring organizations to include the time spent on the annual updating of enrollment forms as part of the monitoring function, for the purpose of establishing a ratio of full-time staff to sponsored facilities, as required by § 226.16(b)(1). This modifies guidance previously issued on February 21, 2003, by permitting annual renewal enrollment activities to be counted towards the sponsoring organization's monitoring hours.

Will These Requirements be Extended to Independent Child Care Centers and Adult Day Care Centers?

With regard to enrollment requirements for child care centers, both sponsored and independent child care centers are also required to implement these changes. As is the case in day care homes, annual updating of the enrollment form for children enrolled in independent centers should reduce the possibility of a center continuing to claim reimbursement for children no longer in care. Since all participants in child care centers must already have on file a current-year income eligibility form (IEF), we recommend that State agencies or sponsoring organizations consider amending the IEF to include this additional enrollment information and to ensure its annual collection. As previously mentioned, we do not believe that these new requirements need to be extended to adult day care centers, though State agencies may do so if they believe that it is appropriate.

Will These Requirements Apply to Outside-School-Hours Care Centers, At-Risk Snack Programs, or Emergency Shelters?

No. When we published the proposal, we included these changes for outside-school-hours care centers, but did not mention at-risk snack programs since they were being addressed in a separate proposed rulemaking (65 FR 60501, October 11, 2000). However, the comments we received on the proposal have convinced us that the enrollment requirement for outside-school-hours care centers is no longer appropriate, because of the drop-in nature of many of these outside-school-hours programs. A total of 49 commenters suggested that outside-school-hours care centers and/or at-risk sites be exempted from these enrollment requirements. These respondents included 31 sponsors or other institutions, one State agency, nine State or National organizations, two providers, and six commenters whose institutional affiliation could not be determined.

Similarly, given the drop-in nature of many at-risk snack programs, we have already issued guidance (January 14, 1999) that advises State agencies that there is no enrollment requirement in the at-risk component of CACFP. Please be aware that this will be addressed in a final rulemaking that will implement the at-risk snack provisions that were added to the NSLA by the Goodling Act. With regard to outside-school-hours care centers, the existing regulatory definition of outside-school-hours care center at § 226.2 and the regulations at § 226.19 have always required enrollment documentation for each child in outside-school-hours care. However, these requirements predate the enactment of the Goodling Act, which stated that at-risk programs and outside-school-hours care centers that are exempt from Federal, State, or local licensing or approval requirements could participate in CACFP based on compliance with State or local health or safety standards. Implicitly, we believe that this statutory language recognizes that both at-risk programs and outside-school-hours care centers are similar in nature, insofar as they are more likely to serve a drop-in population, as opposed to the type of regularly-attending, enrolled population normally served in day care homes and child and adult care centers. Therefore, in response to commenters' observations regarding the need for relief from enrollment requirements in these types of participating facilities, this interim rule removes references to ''enrollment'' previously found in the definition of an outside-school-hours care center at § 226.2 and in the regulations throughout § 226.19(b). Furthermore, emergency shelters participating in CACFP are also exempt from enrollment requirements (*i.e.*, there is no mention of enrollment requirements in the definition of emergency shelter at § 226.2).

What if an Outside-School-Hours Care Facility is Required by State Licensing Rules To Maintain Enrollments on File?

The rule does not exempt any institution or facility from complying with State licensing requirements. Furthermore, if State licensing rules require an outside-school-hours care center to be licensed and to regularly enroll the children in attendance, a State agency would probably wish to include a review of enrollment records in its review of the centers. This will enable a comparison of enrollment to attendance and meal claims, as further discussed in part II(C), below. However, in accordance with this rule, there is no Federal requirement that children in outside-school-hours care centers be enrolled, as there is for children in other centers or in family day care homes.

Accordingly, this rule amends § 226.15(e)(2) and (e)(3) to require that all enrollment forms be signed by a parent, be updated annually, and include information on each child's normal days and hours of care and the meals normally received in care. The rule also makes the same change in those sections of the regulations dealing with child care center and family day care home requirements at §§ 226.17(b)(7) and 226.18(e). It also adds wording to § 226.16(b)(1) to clarify that the time spent in implementing these requirements may be counted as monitoring-related time for the purpose of calculating a sponsoring organization's full-time staff devoted to monitoring. In addition, it removes references to ''enrollment'' previously found in the definition of an outside-school-hours care center at § 226.2 and in the regulations at §§ 226.15(e)(2), 226.19(b)(1), 226.19(b)(3)(i), 226.19(b)(4), 226.19(b)(5), 226.19(b)(7)(i), 226.19(b)(8)(i), 226.19(b)(8)(iv), and 226.19(b)(8)(v).

C. Standard Review Elements Required for Sponsor Review of Facilities

What Did OIG Suggest Regarding Sponsoring Organization Monitoring Requirements?

Current regulations at § 226.16(d)(4) require sponsoring organizations to review their facilities at least three times per year, but do not specify the areas to be covered during the review. OIG suggested requiring that each sponsoring organization review of a family day care home cover certain basic elements of Program management (such as recordkeeping, attendance at training, and menus) and also include a reconciliation of enrollment and attendance records with provider meal claim data. Although FNS Instruction 786–5, Rev. 1 (''Provider Claim Documentation and Reconciliation'', November 8, 1991), recommends that sponsoring organizations reconcile meal claims submitted by family day care home providers with enrollment and attendance records, it does not require that they be part of the normal review process, nor does it state that they should be utilized in reviews conducted by sponsors of centers.

What Did USDA Propose in Response to the Recommendation Concerning Standard Review Elements?

We developed separate optional prototype forms for use by sponsoring organizations in monitoring their family day care homes and sponsored child care centers, but the proposed rule did not require the use of these prototypes. However, we did propose to require that, if State agencies or sponsoring organizations developed their own review forms, the forms include, at a minimum, a review of compliance with Program requirements pertaining to licensing or approval; health, safety and sanitation; attendance at training; meal counts; meal pattern requirements; menu and meal records; and the annual updating and content of enrollment forms (if the facility is required to have enrollment forms on file, as set forth in § 226.15(e)(2) and (e)(3)).

In addition, we proposed to further amend reorganized § 226.16(d)(4)(i) to require that each review of a facility include an assessment of whether the facility has corrected problems noted on the previous review(s).

With regard to the OIG recommendation for reconciliation of meal claims with attendance and enrollment records, we proposed to amend reorganized § 226.16(d)(4)(ii) to require that each review include a thorough examination of the meal claims recorded by the facility for at least five days of operation during the current or previous claiming period. For each day examined, we proposed to require that reviewers use enrollment and attendance records (except for outside-school-hour and at-risk programs, where enrollment records are not required, as set forth in § 226.15(e)(2) and (e)(3)) to determine the number of children in care during each meal service and to compare these numbers to the numbers of breakfasts, lunches, suppers, and/or snacks claimed for that day. Based on that comparison, the reviewers would determine whether the claims were accurate. If there was a discrepancy between the number of children enrolled or in attendance on the day of review and prior claiming patterns, we proposed to require that the reviewer attempt to reconcile the difference and determine whether the establishment of an overclaim is necessary.

Finally, we also proposed two additional changes to the minimum requirements for sponsoring organizations' reviews of facilities. The first was that at least one of the sponsor's annual visits include the observation of a meal service, and the second clarified that the current minimum Federal requirement for family day care homes was that day care home providers record meal counts on a daily basis. The former proposal was discussed in the preamble but inadvertently left out of the proposed regulatory language at § 226.16(d)(4)(iii); the latter involved a minor change to the regulatory language at § 226.15(e)(4).

How Did Commenters' Respond to These Proposals?

State agency and sponsoring organization commenters were generally favorable toward most of these changes. All 19 respondents (17 State agencies and two sponsoring organizations or other instituions) who commented on the concept of including minimum review elements for sponsoring organizations in the regulations favored the idea. Ten (10) respondents made positive comments on the proposal to require the observation of a meal service at least once a year. In fact, as part of the interim rule published on June 27, 2002, current § 226.16(d)(4)(i)(B) now requires that one of the sponsor's required unannounced reviews must include an observation of a meal service.

However, three aspects of the proposed sponsor review elements received at least some negative comment: The inclusion of a health and safety element in the standard review; the clarification of the requirement for a daily meal count in family day care homes; and the proposal to include a five-day reconciliation of meal claims in each review. Each of these three areas is discussed separately below.

Review of health and safety.—A total of 397 respondents commented on the proposed inclusion of a health and safety element in the review requirements for sponsoring organizations. All but four of these commenters stated that the health and safety element should not be included in the standard sponsoring organization review requirements. Those opposed argued that health and safety issues were addressed by State or local licensing authorities; that sponsors already contacted the appropriate authorities when a health or safety problem was noted; and that any attempt by a sponsoring organization to remove a provider from CACFP, or to take other action against a provider, based on a health or safety violation, would exceed the organization's authority and open them to possible legal liability.

Section 243(c) of ARPA amended section 17(d) of the NSLA by authorizing the Department to establish standards that provide for the suspension of day care home providers' CACFP participation when there is an imminent threat to children's health or safety, or the public's health or safety. Although sponsoring organizations are not licensors and do not possess the authority to prevent a home from providing child care, they do possess the authority to determine whether the home meets the requirements for Program participation. Because of ARPA's wording, the interim rule published on June 27, 2002, required sponsoring organizations to suspend a day care home's participation when it is determined that the home has been cited by the health or licensing authority for serious violations that pose an imminent threat to children or the public (see § 226.16(l)(4)). Section 226.16(l)(4) also required that, if the sponsoring organization determines that there is an imminent threat to health or safety, it must immediately notify the appropriate State or local licensing and health authorities and take action that is consistent with these authorities' recommendations and requirements. This meets ARPA's intent to require sponsoring organizations to make common-sense determinations concerning the health and safety of children in family day care, and the provider's continued eligibility to participate in the Program, while recognizing the authority of State or local licensing or approval bodies to

determine whether the day care home will still be allowed to provide child care in that jurisdiction. In addition, the interim rule published on June 27, 2002, added to the regulations § 226.16(l)(2), which is a list of serious deficiencies for facilities, one of which is the existence of conduct or conditions that pose an imminent threat to the health or safety of children in care or the public.

Given ARPA's language concerning suspension of a day care home's participation based on an imminent threat to health or safety, and given the language at § 226.16(l)(2) and (l)(4), it is inappropriate to withdraw all reference to health and safety from this rule. However, we are also cognizant of the complex issues that could arise when a sponsoring organization takes action to remove a provider from CACFP on the basis of health or safety issues. Therefore, this rule removes the health and safety element from the list of required review elements but adds a new paragraph, § 226.16(d)(4)(viii), that requires a sponsoring organization of family day care homes to immediately contact the appropriate licensing authority when the sponsor detects conduct or conditions that pose an imminent threat to the health or safety of children in care or to the health or safety of the public. This is consistent with the regulatory language already added at § 226.16(l)(2). Since many sponsoring organizations commenting on the regulatory proposal stated that this was already their current practice, the requirement should not mark a change from current practice. Rather, the regulatory provision affirms sponsoring organizations' authority to make an assessment and clarifies sponsoring organizations' regulatory responsibility to consult with appropriate licensing officials when they find conditions or conduct that pose an imminent threat to health or safety.

Accordingly, this interim rule removes the language from § 226.16(d)(4)(i) that identified health, safety, and sanitation as a standard part of a sponsoring organization's facility review. Instead, a new paragraph, § 226.16(d)(4)(viii), has been added that describes the actions a sponsoring organization must take when it discovers conduct or conditions in a day care home that pose an imminent threat to children's health or safety, or to public health or safety.

Daily meal counts in family day care homes.—A total of 382 positive comments and 11 negative comments were received on this provision of the proposed rule. The greatest division of opinion occurred among State agency commenters, where 14 commenters agreed and 9 disagreed with the proposal. Several of these commenters (and the two sponsoring organization commenters who opposed the provision) recommended alternative language that would require day care homes to take meal counts at or near the meal service, or prior to the next meal service. Those opposed to the provision believed that meal counts needed to be taken more frequently than daily in order to ensure Program integrity and to address the type of block claiming described elsewhere in the rule. In particular, State agency opponents of the proposed language noted that group day care homes, homes providing shift care, and homes located in States with licensing standards that allow large numbers of children in family day care were examples that warranted a requirement for homes to record meal counts more frequently than daily.

We are impressed by these concerns, and are concerned that many of the commenters favoring this clarification characterized it as a prohibition on requiring homes to take meal counts more frequently than daily. While we know that large family and group day care homes and homes providing shift care are not the norm, they nevertheless exist, and our proposal was not intended to prevent a State agency from establishing additional State rules to govern these situations. Therefore, although we do not intend to modify the language pertaining to daily meal counts in family day care homes, we have added language expressly recognizing State agencies' authority to establish State requirements for more frequent meal counts in large family or group day care homes with a total of more than 12 children enrolled for care, or in day care homes that have had serious deficiency findings related to meal counts and claims. We have chosen to use this threshold primarily because we believe it reasonable to expect a provider to be able to mentally keep track of, and accurately record at the end of the day, up to that number of children in attendance on a single day. In addition, since facilities with more than 12 children in care at one time are classified as centers or group homes in most States, it seems logical to apply the requirement for time-of-service meal counts to those homes that serve more than 12 children in a single day. State agencies must not establish such requirements for homes with 12 or fewer children enrolled for care unless the home has had a serious deficiency relating to its meal counting and claiming practices. We also wish to re-emphasize, as we did in the preamble to the proposed rule, that claims for reimbursement for meals served on the day prior to the review that have not been recorded at the time of the review must not be paid.

Accordingly, this rule amends § 226.15(e)(4) to require that family day care homes take daily meal counts, but also provides State agencies with authority to establish requirements for the recording of time-of-service meal counts in family or group day care homes with a total of more than 12 children enrolled for care, or in day care homes of any size that have had serious deficiency findings related to meal counts and claims. The rule also incorporates the proposed language concerning time-of-service meal counts in centers at §§ 226.11(c)(1), 226.15(e)(4), and 226.17(b)(8).

Five-day reconciliation of claims.—As previously mentioned, we proposed to require that part of each facility review include a five-day reconciliation of meal counts against enrollment and attendance. This means that, as part of each facility review, a sponsoring organization reviewer must compare five days of meal counts from the current or previous claiming period against the facility's enrollment records and any separate daily attendance records. A total of 16 commenters responded to this provision, with 14 in favor and 2 sponsoring organizations opposed. Those who opposed the proposal believed that the addition of this requirement would be burdensome.

After the determination of a facility's compliance with meal pattern requirements, we consider the five-day reconciliation to be among the most important aspects of a facility review. Although it was not previously required, FNS Instruction 786–5, Rev. 1, had long recommended such practices. Based on abundant OIG and other review and audit findings, the September 12, 2000, rulemaking proposed to elevate the recommendation to a requirement.

Based on our conviction that on-site reconciliation during a review is a vital aspect of assuring Program integrity, this interim rule incorporates into the regulations the requirement for a five-day reconciliation as a part of all facility reviews. However, we did add regulatory language making clear that reconciliation of claims to enrollment records was not required in those types of facilities not required to keep enrollment records (*i.e.*, at-risk snack programs, outside-school-hours care centers, and emergency shelters). State agencies should also note that, to effectively instruct sponsors on how to

resolve discrepancies between enrollment/attendance and meal count/claim data, it will be necessary to develop Statewide policies and procedures that all sponsors are required to use. This will ensure consistent treatment of discrepancies across sponsors. We strongly recommend that State agencies address this issue by amending the policies and procedures they have already established and disseminated to sponsors regarding how to determine when a provider error rises to the level of a serious deficiency.

Accordingly, § 226.16(d)(4)(ii) is amended to include this requirement.

D. Meal Claim Edit Checks

What Are Edit Checks?

Edit checks are methods of comparing the information that appears on a claim for reimbursement with other information (e.g., enrollment, approved meal types) about the claiming facility's normal operations in order to help determine the claim's validity. An edit check by itself may identify erroneous claims, but more often will identify claiming patterns that serve as an indication of a possible error (i.e., the claiming pattern will be a red flag) to those reviewing the claim. These indicators should lead a reviewer to make a closer examination of the facility's claims to determine if the claims are accurate. For example, one common edit check would be to compare the total number of meals claimed by a facility to the product of the number of children enrolled at the facility, times the number of serving days in the month, times that facility's number of approved meal services. If the total number of meals exceeds the product of enrollment times serving days times approved meal services, it could be an indication that the facility has overclaimed meals in that month.

What Regulatory Requirements Now Exist To Help Ensure That the Claims Being Submitted by Facilities Accurately Reflect Their Actual Meal Service?

Section 226.10(c) of the current regulations requires all institutions to report claims information in accordance with the State agency's financial management system and in sufficient detail to justify the amount of reimbursement claimed. However, these regulations establish no specific edit check procedures that all sponsors must utilize to determine the validity of facility claims, or that all State agencies must utilize to determine the validity of institutions' claims.

What Did the Department Propose To Require With Regard to Specific Sponsoring Organization Edit Checks?

The Department proposed to amend § 226.10(c) to specify minimum requirements for the edit check process performed by sponsoring organizations, including: (1) Verifying that facilities are approved to claim the types of meals (breakfast, lunch, supper, snack) being claimed; (2) ensuring that facilities do not claim meals in excess of the maximum number they may serve in a claiming period (the common edit check mentioned in the second preceding paragraph); and (3) a means of detecting block claims (which the proposed rule defined as no daily variation in the number of meals claimed for 10 or more days). The proposal also stated that edit checks must be performed for every day meals are claimed by a facility. In addition, we proposed to incorporate similar language at §§ 226.11(b) and 226.13(b) governing consolidated claims submitted by sponsors of centers and homes, respectively.

How Did Commenters Respond to These Proposed Changes?

We received a total of 427 comments on the proposal to add specific edit checks to the CACFP regulations. In general, commenters agreed with the need for edit checks. Thirty-four (34) commenters explicitly stated their support for edit checks, while only one commenter opposed edit checks. Twelve commenters (six State agency commenters and six sponsoring organizations) explicitly endorsed the sponsor-level edit checks that we had proposed. In addition, 318 commenters stated that sponsoring organizations should be permitted to develop their own systems of edit checks, meaning that they, too, agreed with the need for some form of monthly claim system edit checks.

However, commenters overwhelmingly disagreed with the linkage in the proposed rule between the block claiming edit check and the requirement for a sponsoring organization to conduct household contacts. A total of 333 commenters wanted the block claiming edit check to be optional.

In addition, the vast majority of commenters stated that, if the Department adopted the edit checks that were proposed, they should be defined differently. A total of 345 commenters stated that the proposed rule could lead to the impression that the purpose of the edit check was a precise daily reconciliation between the claim and meals consumed by individual children. To remedy this, the commenters suggested what they referred to as a ''reasonable person standard'', and requested that the Department add explicit language clarifying that sponsoring organizations were to use such a reasonable person standard in evaluating edit checks. Most commenters specifically suggested that we add wording to clarify that the edit check was to be performed on the facility's total monthly meal claim, not on a child-by-child basis and not on a daily basis. A total of 151 commenters believed that, if the block claiming edit check were retained, it should be modified (generally by lengthening the period of time used to define a block claim from 10 days to 60 days).

What Changes Will Be Made in This Interim Rule to the Edit Check Requirements at §§ 226.10(c), 226.11(b) and 226.13(b)?

There are several. As discussed in part II(A) of this preamble, above, we have withdrawn the proposal to require sponsoring organizations to conduct household contacts as a result of the proposed block claiming edit check. In addition, we have made several changes to the wording of the regulatory language to clarify our intent that edit checks serve as a means for sponsoring organizations to assess a monthly claim's overall validity, and are not intended as a means of reconciling meals served to individual children, or to provide the more precise reconciliation of enrollment, attendance, and meal counts/claims that can be accomplished when conducting an on-site 5-day reconciliation as part of a facility review. Finally, in recognition of the time that some sponsors will need to bring their automated edit check system into compliance with these requirements, we have delayed implementation of these provisions until October 1, 2005.

Did You Retain the Block Claiming Edit Check?

Yes, although, as previously stated, it is no longer linked to a household contact. Rather, we have redefined a block claim and linked it with a different required follow-up action by the sponsoring organization.

What Is Your Revised Definition of a ''Block Claim'' in This Interim Rule, and What Consequence Now Occurs After a Block Claim Is Detected Through the Edit Check Procedure?

Although, as noted in part II(A) above, most commenters believed that children's attendance was often very regular and that 60 days of identical

claiming should constitute a block claim, we noted that other regulatory proposals (*e.g.*, the proposal to have parents list regular hours and meals received in care on the enrollment form) elicited the response that children's attendance was far too variable to be characterized in terms of a regular schedule. We still believe that claiming the same number of meals served every day for an extended period of time is an indicator of possible claiming improprieties, that sponsoring organizations must establish edit checks to detect block claims and that, once detected, they must be investigated further.

We have, therefore, added a definition to § 226.2 that defines a ''block claim'' as one in which the same number of meals is claimed for one meal type (*i.e.*, breakfast, lunch, snack, or supper) by a facility for 15 consecutive days within the claiming period (generally, one month). If a facility is providing care on weekdays only, that means the block claim trigger would be reached with three weeks of identical claims. If the facility is open on weekends as well, this will mean that the block claim trigger will be reached after just over two weeks of identical claims. Even in a small family day care home, or a home that predominantly serves children of low-income working parents, it seems quite likely that, typically, at least one child would miss a meal service at some point during a 15-day period.

This interim rule also requires a different action by a sponsoring organization when its edit check system detects a block claim. Instead of requiring the sponsoring organization to make a household contact, this rule requires the sponsor to conduct an unannounced review of the facility within 60 days of receiving the block claim from the facility. The 60-day period for conducting the follow-up unannounced review will permit sponsors of geographically dispersed rural facilities to more efficiently plan their reviews and, thus, to reduce travel costs. Furthermore, as discussed below, State agencies will be allowed to provide additional time to such sponsors on a case-by-case basis.

This interim rule also prohibits a sponsoring organization from conducting fewer than three reviews of a facility in a year in which a block claim is detected. This prohibition is discussed in greater detail in part II(F) of this preamble, below, as part of implementing the provision that permits sponsoring organizations to average the number of reviews conducted over the course of a year.

Won't the Triggering of an Unannounced Review Still Require a Great Expenditure of Effort by Sponsoring Organizations, Even in Instances in Which the Provider's Block Claim Is Repeatedly Found To Be Legitimate?

We are cognizant of the fact that the submission of identical claims by a very small family day care home provider could repeatedly trigger an unannounced visit, even though the provider's claim is totally legitimate. Therefore, this interim rule also states that, if an unannounced review is triggered by a block claim, and the review demonstrates that there is a logical explanation for the facility to regularly submit a claim that is identical for every day of a claiming period, the sponsor must document that explanation in its files, and any subsequent block claims detected during the remainder of the current fiscal year would not require the conduct of an additional unannounced visit.

That is, a sponsoring organization whose edit check system detected block claims by a provider or sponsored center would not be required to conduct more than one unannounced review of the facility that was triggered by a block claim, provided that the sponsor had documented a compelling and logical reason for the regular submission of a block claim by that facility earlier in the fiscal year, and that the documented reason for the block claim was still relevant. This provision will place an upper limit on the administrative burden on a sponsoring organization in cases where a small day care home provider is repeatedly, but legitimately, submitting a ''block claim'' as defined at § 226.2 of this rule.

This rule also allows State agencies to provide additional relief to sponsoring organizations for which the 60-day unannounced review requirement could create an inordinate administrative burden. We appreciate that a variety of factors could make it difficult, if not impossible, for a particular sponsor to conduct all of the required unannounced visits within the 60-day timeframe. In such cases, State agencies are authorized to provide a sponsor with up to 30 additional days to complete the unannounced reviews triggered by the block claim edit check.

Could This Rule Ever Lead to a Sponsor Having To Conduct More Than Three Reviews of a Facility in a Year?

Yes, but only under very rare circumstances. For example, let us say that a block claim was detected on an edit check early in the fiscal/review year, and the subsequent unannounced review led to a finding of serious deficiency (*i.e.*, the facility had no persuasive explanation for the block claim). However, if the facility successfully corrected the serious deficiency and was not terminated, a second block claim detected later in the fiscal/review year, after three reviews had been conducted, would require the conduct of a followup, unannounced review that could be the fourth total review of the facility in that year.

However, we wish to emphasize that we expect such circumstances to occur rarely. If the sponsor records a logical explanation for the block claim after an unannounced visit early in the fiscal year (*e.g.*, that a facility provides drop-in care and always fills to capacity on each day that it is open) there would be no need to conduct another (*i.e.*, a fourth) review of that facility if a block claim was detected again late in the fiscal/review year. If the sponsor had not found a logical explanation for the block claim, and believes that the facility has intentionally submitted a false claim, the sponsor must declare the provider seriously deficient, which would make moot the number of reviews to be conducted that year. Alternatively, if the sponsor is unsure that the first unjustified block claim was intentional, but a second unjustified block claim occurred during the year, it would lead to a declaration of serious deficiency and, if corrective action was not taken, termination, again rendering moot the total number of reviews to be conducted in the year.

What Other Changes to the Proposed Regulatory Language Regarding Edit Checks Are Included in This Interim Rule?

First, the language in the introductory text at § 226.10(c) was modified in several ways. The sentence in the proposed rule that referred to performing edit checks for every day meals are claimed has been removed. That sentence led some commenters to believe that we were going to require sponsors to reconcile claims against enrollment and attendance (*see* § 226.10(c)(2)) on a daily, rather than a monthly, basis. In fact, the sentence was only intended to convey that the edit checks must take into account the number of days a facility is approved to serve Program meals (*e.g.*, some facilities are approved to serve meals on weekends, while others operate on holidays). The sentence's removal from the introductory text does not alter the specific requirements set out in § 226.10(c)(1) through (c)(3).

Second, one sentence that was in the introductory text of proposed § 226.10(c), which refers to reviewing discrepancies to determine if the claim is accurate, more properly belonged in § 226.10(c)(2), because it referred specifically to the process of reconciling the number of meals claimed with enrollment and serving days. The sentence has therefore been moved to § 226.10(c)(2) in this interim rule.

Third, we have edited the regulatory text at §§ 226.11(b) and 226.13(b), which refer to the edit check responsibilities of sponsors of centers and sponsoring organizations of family day care homes, respectively. Rather than detailing the edit check responsibilities of such sponsors in each paragraph, this rule merely cross-references § 226.10(c)(1) through (c)(3), which set forth the edit check requirements that apply to all types of sponsoring organizations.

Fourth, 18 commenters specifically believed that our proposed language referring to attendance patterns promoted confusion about the purpose of the edit checks. Of course, in many cases, sponsor's would not have immediate access to their facilities' attendance records, which would limit the sponsor's ability to build information on children's attendance into a monthly edit check system. To reiterate, our intent is to require that sponsoring organizations have in place a monthly edit check system capable of detecting if a facility submits a claim that exceeds the maximum number of meals that should have been served during the claiming period (*i.e.*, claims a number of meals that exceeds the product of enrolled children times approved meal services times days of operation). We have, therefore, removed references to attendance patterns from the regulatory language in this interim rule.

Finally, this interim rule includes specific language (see **DATES** section of this preamble, above) delaying implementation of this provision until October 1, 2005, that was mentioned in the preamble to the proposed rule, but not adequately specified. As noted above, this will provide sponsoring organizations with time to update their computerized claims processing system to implement these required changes to the edit check process.

Accordingly, this rule amends §§ 226.10(c), 226.11(b), and 226.13(b) to require that, prior to submitting their consolidated monthly claim to the State agency, sponsoring organizations conduct at least three edit checks of facilities' meal claims for that period. It also amends §§ 226.10(c)(3) and 226.16(d)(4) to include the changes to unannounced review requirements for facilities that have submitted block claims in any year, as discussed above. The rule further requires that these edit checks be implemented no later than October 1, 2005.

What Did You Propose With Regard to State Agency Edit Checks of Institutions' Claims?

Management evaluations discussed earlier in the preamble revealed several instances in which State agencies did not employ edit checks when processing institutions' monthly claims. For that reason, we believe it is also necessary for State agencies to employ edit checks when processing institutions' claims. We proposed at § 226.7(k) that, at a minimum, State-level edit checks ensure that payments are made only for authorized meal types, and that the total number of meals claimed does not exceed the number of facilities claiming meals, times total enrollment, total approved meal types, and the number of approved serving days during the claiming period.

How Did Commenters Respond to These Proposals?

We received a total of 15 comments, all of which were from State agencies and their staffs. Of these, seven commenters approved of the proposed changes; two approved of them if they were monthly rather than daily requirements; two opposed them; and four opposed them while stating that other State-level edit check requirements would be acceptable.

At least some of the opposition to the proposal seemed to stem from confusion over what edit checks we were proposing to require at the State level, and how the checks were to be implemented. The two monthly claims edit checks that we proposed at § 226.7(k) were designed to ensure that: payments to institutions were made only for approved meal types; and that the number of meals reimbursed did not exceed the product of enrollment times operating days times approved meal types. We also proposed at § 226.6(l)(3) [§ 226.6(m)(4) in this interim rule] that, in the facility reviews required as part of a larger review of a sponsoring organization, State agencies conduct a reconciliation of the facilities' meal counts against enrollment and attendance, just as sponsoring organizations are required to do. We encourage State agencies to test and implement additional edit checks that would increase their ability to detect inaccurate claims during the claim review process.

We did not propose, as several commenters seemed to believe, that State-level edit checks include a day-by-day comparison of attendance, enrollment, and meal counts by type, nor did we propose that monthly edit checks done at the State level take attendance patterns into account (**Note:** as previously discussed, although we did propose that sponsoring organizations' claims edit check systems include attendance patterns as a point of comparison to meal counts, this interim rule has eliminated any reference to attendance factors or attendance patterns). The only time that we envision State agency reviewers examining daily facility records is when they are actually reviewing a facility as part of a larger review of a sponsoring organization, or when they are examining meal count records in their onsite review of an independent center.

Another commenter stated that their State agency would never have any record of the meal types (*e.g.*, breakfast, lunch, snack, supper) that sponsored facilities had been approved to serve. This comment was puzzling, insofar as the regulations at § 226.16(b) require that facilities' applications be approved by the State agency prior to participation. As part of this review of facility applications, it was our assumption that State agencies would note the meal types that facilities are approved to serve, and build into their edit check system an approximate indication of the maximum number of meals, by type, that a sponsoring organization would be expected to submit in any month. This indicator would be designed only to identify egregious errors (*e.g.*, 5 percent of the sponsor's homes are approved to serve suppers, but 20 percent of the meals on the claim are suppers). Thus, while we recognize that not all family day care homes claim Program meals each month, and that there will therefore be a normal monthly fluctuation in the number of meals being claimed by a sponsor, it should still be possible for State agencies to establish certain red flags, or indicators, in their claims processing systems that will alert them to the possibility of erroneous claims and trigger further efforts by the State agency to establish the claim's accuracy.

Accordingly, this interim rule incorporates at § 226.7(k) the monthly State agency edit checks that we had previously proposed. However, this interim rule provides State agencies with time to modify their current claims processing systems by requiring that these edit checks be implemented no later than October 1, 2005.

E. Minimum State Agency Review Requirements

What Are the Current Regulatory Requirements Pertaining to State Agency Reviews of Institutions?

The current regulations governing State agency reviews of institutions are located at § 226.6(m). This section addresses the frequency of State agency reviews and requires that they assess the institution's compliance with these regulations and with any applicable FNS or Department instructions. However, current regulations do not specify the subject areas to be examined in these reviews, nor do they mandate any specific tests to determine the validity of meal claims.

What Were OIG's Findings and Recommendations Regarding State Agency Monitoring Requirements?

OIG found that State agencies' reviews of family day care home sponsoring organizations and family day care home providers ''generally did not include sufficient tests to identify recordkeeping deficiencies and inflated meal claims, and to assess the adequacy of sponsor monitoring of [day care homes].'' We believe it is necessary to propose changes to existing review requirements in order to ensure a consistent, minimum National standard for State-level review of institutions.

What Has USDA Done in Response to These Recommendations?

We proposed that every State agency review of an institution include an assessment of certain aspects of the institution's program. In addition, we proposed that each time a State agency reviews a facility as part of its review of a sponsoring organization, the facility review must include a comparison of the facility's available enrollment and attendance records to the meal counts submitted by the facility to its sponsor. We also developed new prototype forms for State agency review of child care institutions. These forms include sections covering required Program documents on file, facility licensing or approval, meal counts, administrative costs, sponsor training and monitoring of facilities, observation of meal service, and other Program requirements. The September 2000 rule did not propose requiring State agencies to utilize these prototype forms in conducting reviews of institutions. However, we did propose to require that State agencies cover all of these areas in their reviews, and that they make any changes necessary to their State-developed review forms to ensure that the new minimum review requirements are captured on their review forms.

How Did Commenters Respond to These Proposals?

Overall, these proposals generated very little response. A total of 20 comments were received: 15 from State agencies; three from sponsoring organizations or other institutions; one from a National organization; and one from a person whose affiliation could not be determined. Of these, 17 comments were uniformly positive regarding the proposed changes, while three (3) recommended modifications and another raised a question concerning the rule's applicability to reviews of sponsors with affiliated centers.

One commenter stated that more mandatory review elements were needed. This respondent felt that reviews of sponsoring organizations should always include a review of the sponsor's disbursement of food payments to facilities and a sponsor's reconciliation of claims submitted by its sponsored facilities. These are important aspects of a State agency's oversight of a sponsoring organization, but they are already addressed in sections IX (B)(3) and IX(E)(2) of FNS Instruction 796–2, revision 3, ''Financial Management—Child and Adult Care Food Program''. State agencies may certainly choose to include these aspects of sponsor operations in their standard review protocols for institutions if they wish.

Another commenter stated that we should add to former § 226.6(l)(3) the percentage of facilities to be reviewed as part of a State agency's review of a sponsoring organization. However, the percentage of facilities to be reviewed was specified at former § 226.6(l)(5) of the proposed rule, not § 226.6(l)(3). Since publication of the proposed rule, the interim rule published on June 27, 2002, reorganized and redesignated the State agency review requirements as § 226.6(m), and although the requirements pertaining to a State agency's review of facilities—including the percentage of facilities to be reviewed—are already discussed in § 226.6(m)(6), this rule adds to § 226.6(m)(4) a cross-reference to § 226.6(m)(6) in an effort to ensure that the requirement for a specific percentage sample is underscored.

A third commenter expressed the opinion that it was not always possible to include the observation of a meal service in a State agency review. It was not clear whether the commenter believed that the review elements listed at § 226.6(l)(2) of the proposed rule (now at § 226.6(m)(3) in this interim rule) applied to facility reviews conducted by a State agency. Our intent was to specify the minimum requirements for a State agency's review of an institution, which may occur as infrequently as once every three years for an independent center. To that end, we have clarified the language of the review elements to specify that the observation of a meal service must be part of a review of an independent center. Neither the proposed rule nor this rule specify review elements for State agency reviews of sponsored facilities, except that, as previously mentioned, they must include verification of Program applications and a comparison of enrollment and attendance to meal counts submitted by facilities over a five-day period.

The final question about these provisions was how they applied to a State agency's review of a Head Start sponsor or a sponsoring organization's affiliated centers (i.e., sponsored centers that are part of the same legal entity as the sponsoring organization that enters into an agreement with the State agency). We believe that this question may also have been based on the assumption that § 226.6(m)(3) sets forth required elements for a State agency's review of sponsored facilities when, in fact, only § 226.6(m)(4) applies to the reviews of institutions conducted by a State agency.

Accordingly, this interim rule amends § 226.6(m)(3) to require that each State agency review of an institution include a review of specified review elements; amends § 226.6(m)(4) to require that each State agency review of a sponsoring organization include reviews of a sample of sponsored facilities in order to compare enrollment records, attendance records, and day-of-review meal counts observed during sponsor reviews to meal counts submitted by the facility on its monthly claim; and further amends § 226.6(m)(4) to cross-reference the verification requirements at §§ 226.23(h) and 226.23(h)(1).

F. Review Cycle for Sponsored Facilities

What Are the Current Requirements for Sponsoring Organization Review of Facilities?

The regulations at § 226.16(d)(4) establish the requirements for sponsoring organizations' reviews of their facilities, and establish different minimum requirements for facility reviews by sponsors of centers and sponsors of family day care homes.

The requirements for monitoring sponsored centers and family day care homes are similar in most respects. Both

require that: the sponsored facility be reviewed three times per year; no more than six months elapse between reviews; and new facilities be reviewed during the early stages of their operation. However, there are some differences in the current requirements for reviewing different types of sponsored facilities:

- New homes are currently required to be reviewed in their first four weeks of operation, whereas new sponsored centers are to be reviewed during their first six weeks of operation; and
- With State agency approval, sponsoring organizations of family day care homes are currently permitted to review each home an average of three times per year, meaning that they may devote a greater share of their review resources to the review of new or problem day care home providers, provided that the average number of annual visits per home is at least three. This allows family day care home sponsors more flexibility than sponsors of centers.

What Changes did USDA Propose?

We proposed to make all types of facilities subject to the same general review requirements (three reviews per year; allow no more than six calendar months between reviews; and review each new facility within its first four weeks of Program operation). We also proposed giving all sponsoring organizations (not just sponsors of family day care homes) greater flexibility in their conduct of reviews.

Specifically, we proposed that, without State agency approval, sponsoring organizations could average their facility reviews. This means that, if a sponsor administered CACFP in 300 facilities, it would still be required to conduct at least 900 reviews. Each sponsored facility would not necessarily have to be reviewed three times, but all facilities would have to have at least two unannounced reviews each year. Under our proposal, if the sponsoring organization's first two reviews in a review cycle revealed no serious problems, the sponsoring organization would have the option of not conducting a third review of that facility and instead conducting an extra review at another facility. This proposed change was intended to permit sponsoring organizations the flexibility to target their reviews to newer facilities or facilities with a history of operational problems, as they see fit, while ensuring that there is no reduction in the sponsor's overall monitoring efforts.

How Did Commenters Respond to These Proposals?

Commenters were somewhat divided in their response to this section of the proposed rule. Altogether, 430 comments were received on this portion of the proposal, with 393 expressing support for one or both of the primary proposals (uniformity in review requirements for different types of sponsored facilities and the provision of the flexibility for sponsoring organizations to conduct an average of three reviews without State agency permission). However, although sponsoring organizations were more likely than State agencies to support the averaging of reviews, a significant number of State agencies strongly supported this proposal while a small but significant number of sponsoring organizations opposed it.

Uniformity in review requirements for different types of facilities.—No negative comments were received in response to the proposal to make the review requirements identical for all types of facilities. Accordingly, that aspect of the proposed rule is incorporated in this interim rule at reorganized § 226.16(d)(4)(iii), which also includes the requirements (added to the regulation by the interim rule published on June 27, 2002) that two of the three reviews conducted be unannounced, and that one unannounced review include the observation of a meal service. In addition, readers should note that, although the requirements for facility reviews are still located at § 226.16(d)(4), the paragraphs within that section have been re-numbered to accommodate some of the changes being incorporated in this interim rule.

Averaging of reviews.—Twenty-six (26) commenters opposed the proposal to permit sponsoring organizations to conduct an average of three reviews per facility per year. Some of these commenters specifically objected to the elimination of the requirement that sponsoring organizations obtain permission for this flexibility from the State agency; other commenters (mostly sponsoring organizations) objected because they believed that providers who received their second review and knew they would not receive another review during the review cycle were more likely to become lax in their adherence to critical Program requirements.

Since publication of the proposed rule, the publication of the first interim rule on June 27, 2002, included the requirement that two reviews per facility per year be unannounced. We believe that this change will go far toward responding to the comment about providers' possible tendency to become lax after a second review. This interim rule states that a provider or sponsored center must receive two unannounced reviews during a review/fiscal year and be found to operate a compliant program (i.e., the sponsor detected no serious deficiencies, as defined in § 226.16(l)(2)) before the averaging provision can be used for that facility (i.e., before the facility is eligible to be reviewed only twice in that year). In addition, the changes made by this interim rule discussed in part II(D), above, mean that this flexibility would be unavailable to a sponsor if a particular facility submitted a block claim. Any facility that submits a block claim for any reason is not eligible to receive fewer than three reviews (at least two of which must be unannounced) in a given year. This restriction will help to ensure that those providers most in need of three or more reviews in a year will continue to receive three or more reviews. Furthermore, in accordance with the definition of an unannounced review at § 226.2, we expect that sponsoring organization monitors will not reveal anything about review schedules or review protocols to providers, meaning that providers should not know whether they are scheduled for more reviews during the remainder of the fiscal year. Finally, sponsoring organizations that are not in favor of this change are not required to implement it (i.e., they could continue to conduct three reviews of each facility each year).

Accordingly, this rule retains the proposed language on the averaging of reviews by sponsoring organizations, without State agency permission, at reorganized § 226.16(d)(4)(iv). Furthermore, in accordance with the requirements for unannounced reviews promulgated in the interim rule published on June 27, 2002, this interim rule requires that any facility reviewed only twice in a year must have had two unannounced reviews in that year without any findings of serious deficiency.

Wording of provision for averaging of reviews.—We proposed that the third review could be dropped for a particular facility when sponsoring organizations had completed two of the three required reviews without discovering serious problems. Twelve (12) commenters objected to the proposed wording and stated that it was too restrictive. Several commented, for example, that no provider would be able to meet the meal pattern standard, since minor problems

of compliance were often discovered during reviews.

Since publication of the proposed rule, the interim rule published on June 27, 2002, added language at § 226.16(l)(2) of the regulations that defines ''serious deficiencies'' for a provider or other sponsored facility. It was necessary to add this provision to the regulations in order to implement ARPA, and the list of serious deficiencies for facilities includes problems that are substantially the same as the serious problems listed in the proposed rule. However, we would hope that labeling these as serious deficiencies that could lead to a provider's termination for cause clarifies that we are not referring to minor instances of non-compliance with the meal pattern or other Program requirements. As we stressed in our training on the 2002 interim rule, we expect that, in determining what rises to the level of a serious deficiency, sponsoring organizations will exercise sound management judgment, just as we would expect State agencies to do in assessing whether an institution is seriously deficient. To underscore this point, the language describing sponsoring organizations' flexibility in this area now refers specifically to serious deficiencies as defined in § 226.16(l)(2).

If a Facility Receives On-Site Training Rather Than a Third Review, Can the Training Be Counted Towards the Sponsoring Organization's Required Number of Facility Reviews To Be Conducted for the Year?

No. This flexibility in conducting reviews was added to the regulations so that sponsoring organizations could better target reviews to those facilities most in need of them. It was not designed to allow training visits to substitute for on-site reviews.

Accordingly, this interim rule further amends § 226.16(d)(4) to:

- Make uniform the general requirements for sponsors' review of all of their child and adult care facilities, regardless of whether the facility is a home or a sponsored center;
- Permit sponsoring organizations of day care homes or centers to waive a third review at a facility if the sponsor has conducted two unannounced reviews of the facility during the review cycle without discovering a serious deficiency, as described in § 226.6(l)(2); and
- Allow sponsoring organizations of day care homes or centers to conduct an average of three reviews per facility per year across their sponsorship (*i.e.*, the third review at one facility could be deferred so that additional reviews could be conducted at a new facility or at a facility experiencing Program problems).

G. Disallowing Payment to Facilities

What Were OIG's Recommendations With Regard to Disallowing Payments to Facilities?

The OIG audit of the family day care home component of CACFP (No. 27600–6–At) found that, in some instances where a provider had submitted claims for reimbursement for meals served to absent or nonexistent children, they still received Program payment for these meals. The audit stated that, due to the wording of the current regulations at § 226.10(f), ''State agencies and sponsors may be reluctant to disallow payments and/or request repayment of total meal claims made during a period when it was determined that a [day care home] * * * claimed meals [fraudulently] for absent and/or nonexistent children.'' According to OIG, the failure of § 226.10(f) to specifically mention child and adult care facilities may have discouraged some State agencies and sponsors from withholding or recovering funds improperly paid to facilities, and OIG recommended the addition of language to § 226.10(f) to rectify this. [Please note that the OIG report erroneously identified § 226.10(f) as affecting sponsors when, in fact, it applies only to State agencies' decision not to pay all or a portion of a claim].

What Did the Department Propose?

We proposed to amend § 226.10(f) to require State agencies to deny payment of that portion of a claim identifiable with one or more facilities when audits, investigations, or other reviews reveal that the facility or facilities claimed meals for absent or nonexistent children or in other unlawful acts with respect to Program operations.

How Did Commenters Respond to These Proposals?

Altogether, 18 commenters responded to this proposal (14 State agencies, 3 sponsoring organizations, and one National organization), and all were in favor of adding facilities to § 226.10(f). Eight commenters, however, added qualifications to their support or asked that we add clarifying language to this interim rule, and some of these additional comments or concerns indicated confusion regarding the regulations' treatment of denied claims and withheld payments.

For example, four commenters stated that, in these cases, an overclaim should be assessed. However, overclaims are assessed only after a claim has been paid; this portion of the regulations deals instead with the circumstances under which it is permissible to deny payment of a claim, or a portion of a claim. Another commenter believed that the proposal compromised a State agency or sponsoring organization's ability to deny payment of a fraudulent claim, while another believed that the regulation needed to state clearly that termination for cause should be the result of the submission of false claims. We hope that the addition to the regulations of § 226.16(l) by the interim rule published on June 27, 2002, made absolutely clear that a sponsoring organization must declare seriously deficient any day care home that submits a false claim, that this is the first step in the process of terminating that provider's participation for cause, and that a sponsor must only pay the valid portion of any claim submitted by a facility. Our proposed revision of this section (§ 226.10(f)) merely clarifies a State agency's ability to disallow that portion of a sponsor's claim that is identifiable with facilities where investigations, audits, or reviews have revealed that the facility claimed meals for absent or nonexistent children or otherwise engaged in unlawful acts with respect to Program operations.

Two other comments merit special attention. These commenters stated that the language of § 226.10(f) is incomplete because it does not state that a State agency may withhold an institution's claim while it is being investigated for possible fraud, or that a sponsoring organization may do the same when handling a possibly fraudulent claim submitted by a facility. One of these commenters—apparently in reference to ARPA's prohibition on suspension of payments except under specified circumstances—stated that our proposed regulatory language would not be effective if an institution or home that submitted a fraudulent claim must continue to be paid. It is critical for us to distinguish between suspension of payments, which in all but two situations is prohibited under the NSLA, and a State agency or sponsoring organization's obligation to refuse to pay an invalid claim.

Although section 243 of ARPA and section 307 of the Grain Standards and Warehouse Improvement Act of 2000 (Pub. L. 106–472) prohibit the suspension of an institution's Program participation, including Program payments, except under certain specified conditions (the institution or home's conduct or environment poses an imminent threat to participants' health or safety or public health or

safety, or the institution knowingly submits a false or fraudulent claim), these laws did not affect the State agency's right and responsibility to deny payments to an institution when an invalid claim is submitted, or a sponsoring organization's right and responsibility to deny payments to a facility when an invalid claim is submitted. Rather, ARPA simply stated this requirement in another way: That, to the extent reasonably possible, a State agency must refuse to pay that portion of an institution's claim that is invalid, rather than suspending or withholding payment of the entire claim. Section 226.10(f) simply makes explicit that one source of information on which a State agency's decision to deny payment of a claim could be based is evidence found in audits, investigations, or reviews. The amendment to § 226.10(f) that we proposed at OIG's recommendation was intended to remove any possible perception that the State agency lacked this ability to deny payment of that portion of an institution's claim that was identified with one or more facilities where an audit or review led the State agency to conclude that the payment would be improper.

In other words, the NSLA requires that, in these cases, the State agency do more than simply freeze payments to the sponsor. Rather, it requires the continued payment of the valid portion of the claim, and the non-payment of the invalid portion of the claim. In essence, the NSLA requires that the State agency not over-react by stopping the payment of the valid portion of a claim, but also requires that it not under-react by failing to determine the reason for the erroneous claim and whether initiation of the serious deficiency process is warranted.

Accordingly, this interim rule amends § 226.10(f) as proposed.

H. Change To Audit Requirements

What Changes Did the Department Propose?

We proposed changes to the language of § 226.8(a) of the regulations, in large part to reflect changes to government-wide auditing rules.

The regulations state that, unless exempt, State- and institution-level audits must be carried out in accordance with Office of Management and Budget (OMB) Circulars A–128 and A–110 and with 7 CFR part 3015, the Department's Uniform Federal Assistance Regulations. However, audit requirements for States, local governments, and nonprofit organizations can now be found in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'', and the Departmental regulations at 7 CFR part 3052. These requirements apply to audits of State agencies and institutions for fiscal years beginning on or after July 1, 1996. Therefore, we proposed updating these regulatory references.

The two substantive changes to these requirements involved a change in the government-wide threshold for the conduct of audits, which was raised from $25,000 to $300,000, and the express prohibition on using Federal funds for audits not required by 7 CFR part 3052. That means that, if an institution expended less than $300,000 in total Federal resources (which includes CACFP reimbursements, the value of USDA commodities, and any other Federal funds received by the institution), it is now exempt from the Federal requirement to have an organization-wide audit or, in some cases, a program-specific audit. To address these changes to the audit requirements, we proposed two changes to §§ 226.8(b) and 226.8(c). Specifically, we proposed to revise the language at § 226.8(b), which describes the circumstances under which a State agency may make a portion of audit funding available to institutions for the conduct of organization-wide audits, to reference the new Departmental regulations governing such funds use. Also, we proposed revising the language at § 226.8(c), which describes the circumstances under which the State agency may use audit funds for program-specific audits, to clarify that the funds may also be used for agreed-upon procedures engagements (limited-scope reviews conducted by auditors), as described at 7 CFR 3052.230(b)(2).

What Rules Govern Audits for Proprietary Institutions?

The current regulations at § 226.8(a) state that proprietary (for-profit) institutions not subject to organization-wide audit requirements must be audited by the State agency at least once every two years. However, we issued guidance (dated January 18, 1991) that exempted proprietary institutions from this requirement if they received less than $25,000 per year in Federal Child Nutrition Program funds, and later issued additional guidance (dated August 13, 1998) informing State agencies that Departmental regulations at 7 CFR 3052.210(e) provide State agencies with the authority and responsibility to establish audit policy for proprietary institutions. The 1998 guidance further recommended that ''the threshold for these [proprietary] audits previously established at $25,000 should be raised, given the cost of the audits relative to the benefits''. Institutions were (and still are) also required to comply with the audit requirements of all other Federal departments or agencies from which they receive funds or other resources.

How Did Commenters Respond to These Proposals?

We received only 10 comments on these changes, seven of which were in favor. Two commenters objected to the government-wide change to the audit threshold, and believed that smaller organizations were as much in need of audits as larger ones. However, we cannot require the conduct of audits when they are not required under government-wide auditing rules. States may, of course, engage in such additional audits as they deem necessary under their own State authorities.

Two other commenters who supported the rule, plus two who did not, opposed the change in the amount of audit funding available to State agencies. Since the reduction in audit funding was mandated by the Goodling Act, it is dealt with in part IV of this preamble, below.

Accordingly, this interim rule adopts the changes to § 226.8 as proposed.

I. Income Eligibility of Family Day Care Home Providers Based on Food Stamp Participation

What Did the Operation Kiddie Care Audit Reveal Regarding Family Day Care Home Providers Claiming Income Eligibility on the Basis of Food Stamp Participation?

The Operation Kiddie Care audit uncovered problems regarding the CACFP participation of some family day care home providers whose income eligibility is based on participation in the Food Stamp Program. OIG sampled 24 providers in two States who claimed reimbursement for meals served to their own children based on their household food stamp participation. Of these providers, OIG determined that, in applying for Food Stamp benefits, 14 had not revealed, or had understated, their self-employment income from providing child care. In these cases, the provider either should have received a lower food stamp allotment, or would have been ineligible to receive food stamps at all. In some cases, this would also have prevented them from claiming Program reimbursement for meals served to their own children.

These findings were developed by OIG prior to the July 1, 1997, implementation of the two-tiered

reimbursement system for family day care home providers. Since the implementation of tiering, the fiscal consequences of underreporting child care income are potentially far greater. Providers qualify to receive Tier I rates for reimbursable meals served to all children in their care if they live in an eligible, low-income area, or if their household income is at or below 185 percent of the Federal income poverty guidelines. Providers claiming income eligibility on the basis of food stamp participation are only required to provide their name and food stamp case number to their sponsor in order to receive the higher, Tier I benefit for all children in their care. Furthermore, although sponsoring organizations are required to verify the information submitted by providers claiming Tier I eligibility based on income, there are no verification requirements, per se, for a provider claiming eligibility on the basis of food stamp participation. Therefore, if providers are improperly receiving food stamps, and if their actual household income exceeds 185 percent of the Federal income poverty guidelines, they would not be eligible to receive tier I reimbursement for CACFP meals served to all of the children in their care.

What Did FNS Propose To Address This Potential Problem?

We proposed to add, effective 6 months after issuance of an interim or final rule, a requirement that sponsoring organizations of family day care homes provide to the State agency a list of all of their sponsored providers who qualify for tier I eligibility on the basis of food stamp participation, and that they continue to supply this list to the State agency on an annual basis. Within 30 days of receipt, the State agency would be required to provide this information to the State agency responsible for the administration of the Food Stamp Program. In this way, food stamp eligibility workers would know that a specific food stamp recipient was self-employed as a CACFP day care home provider, and would be better able to discern the household's actual income. Once this information was provided to the State Food Stamp agency, they would be required, under § 273.12(c), to use the information in determining the household's food stamp eligibility.

How Did Commenters Respond to This Proposal?

Comments concerning this provision were largely negative. Of 455 comments received, 448 disapproved of our proposal, six favored it, and one commenter raised a question (''What will the Food Stamp Program do with this information?'') without stating an opinion about the proposal. Opposition came from State agencies (33 opposed, three in favor, one uncertain); sponsoring organizations and other institutions (285 opposed, two in favor); State, regional, and National groups (20 opposed, one in favor); providers (60 opposed); and those whose affiliation could not be determined (50 opposed). Of those opposed, 173 commenters cited one or more specific reasons for their opposition. The most frequent objection (mentioned by 114 commenters) was that the proposal might serve as a barrier or disincentive to participation in CACFP or the Food Stamp Program by low-income providers most in need of these programs' benefits. Many of these respondents stated that the provision of this list to food stamp eligibility workers would identify these providers as likely to be ineligible, expose their food stamp cases to exceptional scrutiny, and discourage them from applying to either program. In addition, 50 commenters believed that the proposal would impose an unwarranted burden on State agencies and sponsoring organizations, while 22 stated that this was a issue that should be addressed by the Food Stamp Program and not the CACFP. Twenty-two commenters believed that the proposed provision of information from providers' income eligibility applications violated statutorily-mandated confidentiality requirements, while 18 others cited other reasons, including a reluctance to implement a Program change on the basis of the small number of cases examined by OIG.

What Is the Department's Response to These Comments?

We regret the perception that the provision of this list may discourage legitimate participation in either the Food Stamp Program or CACFP. As a Department, we make every effort to encourage participation by eligible individuals in both programs. At the same time, we are also responsible for ensuring that those individuals receiving benefits meet the statutory requirements for eligibility.

Clearly, as the Federal department charged with administering both the CACFP and the Food Stamp Program, we have an obligation to ensure that those claiming categorical eligibility for tier I benefits in CACFP based on their food stamp participation have been accurately determined to be food stamp eligible, and that those receiving food stamps have accurately reported their household income. Self-employment income of any kind poses difficulties for those charged with making food stamp eligibility determinations and, since we are in a unique position to improve the accuracy of these determinations by sharing information across programs, we would be derelict in our responsibility as Federal administrators of both programs were we to ignore this issue.

To address this issue without referring a list of providers to the Food Stamp Program would have required that we establish separate verification procedures for providers claiming tier I eligibility based on food stamp participation. However, these procedures would likely be more burdensome to sponsoring organizations and/or State agencies, and could conflict with the NSLA's provision of tier I categorical eligibility for providers receiving food stamps. Sharing this list (which is based on information already in sponsoring organizations' possession, since they must know the basis for each home provider's tier I determination) will involve a marginal amount of added effort for sponsoring organizations and the CACFP State agency, with most of the responsibility for follow-up falling on local food stamp offices. In no way would an individual's presence on the list imply that the household's eligibility for tier I status or food stamp benefits was erroneous; however, if their food stamp case worker determined that they had failed to report income from child care when they completed their food stamp application, then the case worker would conduct a more detailed examination of the case to determine whether the provider was, in fact, eligible for food stamps. Thus, the only providers discouraged from CACFP or Food Stamp Program participation will be those who were not eligible to receive the level of benefits they had previously received.

Five commenters (including two who supported the provision) stated that the Food Stamp Program should also be required to share information with CACFP when they have utilized the information made available under this provision and re-determined a household's actual income. We will work to ensure that this sharing of information takes place whenever a provider qualifying for tier I benefits on the basis of food stamp participation is determined to have household income above 185 percent of poverty (*i.e.*, when the provider's income is determined to be ineligible for tier I benefits).

Finally, with regard to confidentiality issues, we must note that the presumption of ''confidentiality'' does not in any way protect any recipient of

Federal benefits from having their income eligibility statements subjected to closer scrutiny by appropriate State or Federal officials to review the accuracy of the program eligibility determination.

Accordingly, this rule amends § 226.6(f)(1) by adding new paragraph (f)(1)(x), requiring that State agencies annually collect from each sponsoring organization of family day care homes a list of day care home providers qualifying to receive tier I benefits on the basis of their participation in the Food Stamp Program. This new paragraph will also require State agencies to share this information with the State agency administering the food stamp program within 30 days of receipt. This provision will be effective no later than April 1, 2005.

Part III. Training and Other Operational Requirements

As discussed in the Background section of this preamble, OIG's national audit of family day care homes made recommendations for changes to the current requirements for the training of day care providers by sponsoring organizations. Specifically, OIG recommended that the CACFP regulations be strengthened to require that all participating child care providers attend a minimum number of hours in Program and child care training each year, and that minimum content requirements be established for such training. Current § 226.18 requires that the agreement between a sponsoring organization and a family day care home provider include a statement of the sponsor's responsibility to train the day care home provider; however, this provision has, in some cases, been interpreted to mean that training must be offered to day care home providers, and not that providers are actually required to attend the training. OIG also recommended that sponsor monitors receive, at a minimum, training on the same content areas provided to providers.

What Changes To Training Requirements did FNS Propose?

To address these issues, we proposed to reemphasize more strongly that the intent of the regulatory language is to require that providers attend or otherwise participate in the training that sponsors are annually required to offer. In addition, we proposed extending the requirement for mandatory attendance to all sponsored facilities, not just family day care homes. We also stated in the preamble to the proposed rule that sponsoring organizations could fulfill this regulatory requirement in a variety of ways (*e.g.*, group training, training in the provider's home, and on-line training).

What Other Operational Changes Are Addressed in This Part of the Preamble?

In addition, we proposed a number of other operational changes that had been suggested by Program administrators in recent years. These included:

- Giving State agencies the authority to place restrictions on meal service times;
- Providing State agencies with greater flexibility on payment procedures for new child care and outside-school-hours care centers;
- Stating expressly that State agencies are required to issue and enforce the provisions of all Program guidance issued by FNS;
- Stating expressly that sponsoring organizations of family day care homes may neither use temporarily nor retain any portion of providers' food reimbursement, except as specified in § 226.13(c); and
- Eliminating obsolete language with regard to the participation of adult day care centers.

Commenters' responses to these proposed changes are addressed in the preamble discussion that follows.

A. Training Requirements for Sponsored Facilities and Sponsor Monitors

What Are the Current Regulatory Requirements for Sponsor Training of Facility Staff?

The current regulations at § 226.15(e)(13) require institutions to maintain records that document:

- The date(s) and location(s) of all training sessions conducted;
- The topics covered at the session(s); and
- The names of attendees at each training session.

In addition, § 226.16(d)(2) and (d)(3) require sponsors to provide training to all sponsored child and adult care facilities in Program duties and responsibilities prior to beginning Program operations, and to provide additional training sessions not less frequently than annually afterwards. These requirements are designed to ensure that facility staff are familiar with Program requirements prior to beginning their work with CACFP, and that the facility staff participating in CACFP continue to receive additional training on a regular basis.

What Were OIG's Findings and Recommendations With Regard to Facility Training?

OIG found that compliance with these training requirements is not uniformly monitored and enforced by State agencies and institutions. Some CACFP administrators have interpreted current regulations to require that sponsoring organizations offer training to day care home providers, rather than requiring that the providers actually attend the training. In fact, § 226.18 is not entirely clear on this point; currently, the agreement between providers and sponsors must simply include a statement of the sponsor's responsibility to train the day care home's staff. OIG recommended that all participating family day care home providers receive a minimum number of hours in Program and child care training each year, and that sponsors and State agencies verify that providers receive training at least annually.

What Did the Department Propose?

We proposed at § 226.16(d)(2) to clarify that key staff (as defined by the sponsor) from all sponsored facilities are required to attend training prior to participation in the CACFP. We also proposed (at §§ 226.16(d)(3), 226.18(b)(2), 226.19(b)(7) and 226.19a(b)(11)) that key staff (as defined by the State agency) from all sponsored facilities must attend Program training at least annually thereafter. We did not believe that it was appropriate for us to establish a required annual curriculum for providers and key staff at sponsored centers, or a minimum number of annual training hours. However, we did propose that certain content on basic Program requirements be covered in the training of all sponsored child care facilities: serving meals which meet the CACFP meal patterns; explaining the Program's reimbursement system; taking accurate meal counts; submitting accurate meal claims, including an explanation of how the sponsor will review the facility's claims; and complying with recordkeeping requirements. We also proposed at § 226.15(e)(15) that sponsor monitors receive training in the same content areas as providers.

Finally, we proposed that sponsor reviews of all child care facilities include an assessment of compliance with training requirements; and that State agency reviews of sponsors always include a review of the sponsor's training (*see* proposed §§ 226.16(d)(4)(i)(D) and 226.6(1)(2)(v), respectively).

How Did Commenters Respond to the Proposal for Annual Mandatory Training and Related Proposals?

Overall, we received 49 comments dealing with one or more aspects of our training-related proposals. All 30

comments (17 from State agencies and 13 from sponsoring organizations/other institutions) that addressed the general proposal were in favor of requiring training of key facility staff and sponsor monitors. Accordingly, we have included those requirements in this interim rule at §§ 226.15(e)(14) (formerly proposed § 226.15(e)(15)), 226.16(d)(2) and (d)(3), 226.17(b)(9), 226.18(b)(2), 226.19(b)(7), and 226.19a(b)(11). A number of these commenters also stated that they supported the requirement for sponsoring organizations and State agencies to monitor compliance with this requirement as part of their reviews, and no commenters opposed the inclusion of this requirement. Therefore, these requirements were included in this interim rule at § 226.6(m)(3)(viii) [§ 226.6(l)(2)(v) in the proposed rule] for State agencies and at § 226.16(d)(4)(i)(C) for sponsoring organizations [§ 226.16(d)(4)(i)(D) in the proposed rule].

Commenters did express concern regarding the minimum content of the training, the logistics of delivering the training, and to whom the rules apply, as follows.

In-home and other forms of training.—Nineteen commenters (14 sponsors and 5 State agencies) were concerned that our use of the word ''attend'' appeared to prohibit training day care home providers in their homes. Several of these commenters suggested viable training delivery methods and settings that would meet the intent of mandatory participation, including home study, in-home training, and self-paced training. It was not our intent to limit training delivery methods or settings. We believe that effective and valuable training can be provided in a number of different settings, and in a number of different ways. Therefore, we have modified the language describing this regulatory requirement at §§ 226.15(e)(14), 226.16(d)(2) and (d)(3), 226.17(b)(9), 226.18(b)(2), 226.19(b)(7), and 226.19a(b)(11) to clarify that, while participation in training by day care home providers and key staff at sponsored centers is required, State agencies may allow institutions to develop and deliver training in the manner most responsive to the needs of their staff and facilities.

Training content.—Fourteen commenters (9 State agencies and 5 sponsors/other institutions) addressed our proposal to require that the training provided prior to Program operations, and annually thereafter, include information on basic Program information including meal patterns, meal counts, claims submission, recordkeeping, and the Program's reimbursement system. Four State agency commenters supported the proposal as worded, while nine other commenters (4 State agencies and 5 sponsors) questioned the benefit to be derived from presenting the same basic training to the same staff each year. Several of these comments stated that training appropriate for experienced staff and providers would not necessarily be appropriate for new staff and providers. One State agency commenter requested that we require a specific number of training hours per year, and another questioned how staff at affiliated centers could be meaningfully trained when they are employed by the same legal entity as the sponsor.

We anticipate that training requirements established by State agencies and the Program training provided to sponsor staff and facilities would vary according to the needs of the audience, while still meeting the minimum content requirements that we proposed. For example, training delivered to a group of experienced staff in a small child care center where all staff share duties would be different than that delivered to experienced staff in a large facility where there is division of duties, or that delivered to day care home providers. We did not intend that experienced staff (whether providers, sponsored center staff, or sponsor monitors) would have to receive the same training year after year. To clarify this point, we have retained the specific content requirements for the training of new facility staff and sponsor monitors, but have modified the wording at §§ 226.15(e)(14), 226.16(d)(2) and (d)(3), and 226.16(e)(3) by stating that the content of the training must be appropriate to the experience level and duties of the staff being trained.

With regard to specifying a minimum number of hours of annual training, we still believe that, as stated in the preamble to the proposed rule, State agencies are in the best position to develop these types of rules as appropriate. Furthermore, with respect to training the key staff at affiliated centers, we continue to believe that the general requirement for training of all key staff—whether in family or group day care homes, or in affiliated or unaffiliated sponsored centers—is a critical aspect of improving Program performance. Sponsors of affiliated centers must ensure that the staff responsible for operating their sponsored facilities is fully aware of Program requirements, since the parent (sponsoring) organization will bear the responsibility for errors committed by staff at those facilities.

Consequences of failure to participate in mandatory training.—Nine commenters (five State agencies and four sponsors/other institutions) stated that we needed to clarify the consequences to facilities that failed to participate in mandatory training, or to sponsoring organizations that failed to ensure the training of their monitors. Six of these commenters (two State agencies and four sponsors/other institutions) stated that we should clarify that sponsors are permitted to withhold all Program payments to facilities when key staff fail to participate in training. In fact, however, the use of withholding procedures (often referred to as ''stop payments'') was never advisable, and is now specifically prohibited by section 17(f)(1) of the NSLA, as explained in Program guidance issued on March 1, 2002 (''Use of ''stop payments'' in the * * * CACFP'').

The remaining three State agency commenters asked that we describe the consequences for not attending mandatory training and that we specifically address whether such facility staff or sponsors could be declared ''seriously deficient''. In fact, the interim rule issued on June 27, 2002, states at §§ 226.6(c)(2)(ii)(F) and 226.6(c)(3)(ii)(O) that sponsors that fail to train their facilities in accordance with § 226.16(d) are seriously deficient. Since a sponsor will be declared seriously deficient for failure to train facilities, it is clear that a facility that failed to participate in required training was also seriously deficient, in accordance with § 226.16(l)(2)(viii). However, to further clarify this, we have added failure to attend training as a specific serious deficiency at § 226.16(l)(2)(viii), and redesignated former § 226.16(l)(2)(viii) as § 226.16(l)(2)(ix). In addition, we have added to the sponsor-home agreement requirements at § 226.18(b)(2) specific wording that requires the home to participate in the training offered by the sponsor. This will provide notice in the agreement that, should the home fail to attend training, it would be out of compliance with the sponsor-home agreement.

Key staff.—Two commenters (one State agency and one sponsor/other institution) stated that our use of the term ''key staff'' was unclear. The sponsor commenter believed that sponsoring organizations should define key staff, while the State agency commenter believed that FNS should make this determination.

In fact, the proposed rule was inconsistent on this point. Section 226.16(d)(2), referring to training of key facility staff prior to Program operations, stated that the key staff would be defined by the sponsoring organization; § 226.16(d)(3), referring to annual training of key facility staff, said that the State agency would define key staff, as did §§ 226.17(b)(9), 226.18(b)(2), 226.19(b)(7), and 226.19a(b)(11). It was our intent that all day care home providers be trained prior to participation and annually thereafter, and that the key staff of sponsored child and adult care centers receive similar training. State agencies, not sponsors, will be most objective in determining which sponsored facility staff are required to attend training, and we have changed the wording of § 226.16(d)(2) accordingly.

B. Times of Meal Service

What Are the Current Restrictions on the Time of Meal Service?

Except for outside-school-hours care centers, current regulations do not place any limitations on the time of meal service. For outside-school-hours care centers, the regulations at § 226.19(b)(6) require that three hours elapse between the beginning of one meal service and the beginning of another, except that 4 hours must elapse between the beginning of the lunch and supper meal services when no snack is served between lunch and supper. In addition, this section of the regulations prohibits outside-school-hours care centers from beginning a supper service after 7 p.m. or ending the supper service after 8 p.m. This section of the rule also limits the duration of meal services in outside-school-hours care centers to a maximum of two hours for lunch and supper and one hour for other meal services.

Who Has Asked for Changes to These Requirements?

Some State Program administrators have periodically requested that we establish restrictions akin to those in outside-school-hours centers to meals served in other types of facilities. In the past, we were not prescriptive in other settings, having established the outside-school-hours limits due to such facilities' potential overlap and duplication of meal services already received by children in other types of child nutrition settings (primarily, child care centers or schools). However, we are concerned with recent audit and review findings that some child care facilities have abused the Program in various ways because of the lack of such meal service restrictions. In some cases, different meal services were provided with little time between them, in an attempt to maximize reimbursement; in other cases, suppers have regularly been claimed at facilities where, when reviewers are present, no children are in attendance. Some State agencies attempting to address this issue have felt hampered by the absence of Federal regulatory authority for them to establish such time limits for meal services.

What Did the Department Propose?

We proposed to give State agencies broad regulatory authority, at proposed § 226.20(k), to impose limits on the duration of meal services and the time between meal services. In States where Program reviews have uncovered patterns of abuse such as claiming of multiple meals to children in care for a brief amount of time, we believed that State agencies should have appropriate tools for eliminating such mismanagement. In these circumstances, it is appropriate for State agencies to have regulatory authority to support their attempts to limit this type of abuse.

What Comments Did the Department Receive on This Proposal?

We received 474 comments on this proposed provision. Of these, 14 were in total agreement with the proposal as written (12 State agencies and two sponsors/other institutions) while 14 sponsors or other institutions opposed it, with eight of the sponsors stating that they should be able to establish any time limits themselves, with State agency approval. Of the remaining 446 comments, all expressed partial support for the provision, but asked for modifications as follows:

- Three commenters (two State agencies and one sponsor/other institution) agreed with the provision, but asked for specific National standards on the times and duration of meal services, and the times between meal services.
- Two State agency commenters agreed with the provision, but believed that the language granting them specific authority to establish time of meal service limits should reference cultural and economic factors that should be taken into consideration.
- One sponsor commenter agreed with the provision, but believed that it should specifically refer to a prohibition on serving the same child multiple meals in a short period of time.
- A total of 191 commenters (sponsors, independent centers, providers, State and National groups, and others) agreed with the provision, but asked that the regulatory language require State agencies using this authority to establish a waiver system that referenced relevant factors that must be taken into account by the State agency.
- A total of 249 commenters (sponsors, independent centers, providers, State and National groups, and others) agreed with the provision, but asked that it include waiver language and that it specifically exempt outside-school-hours care centers from time of service requirements.

Clearly, these commenters have cited a number of reasons that a single uniform approach to times of meal service may not work. That is why, as stated in the preamble to the proposed rule, we are reluctant to establish fixed National limits. The CACFP needs to be flexible enough to accommodate children's varying needs, depending on their age, cultural traditions, socioeconomic status, participation in the Head Start Program, and even the distance that school-age children travel between child care and school. We strongly encourage State agencies to work with participating institutions to ensure that they are fully aware of the variety of factors that need to be considered in establishing time of meal service limitations in each State. However, we believe that State agencies will approach meal service limits mindful of the same concerns expressed by sponsors. It is up to each State agency to determine the necessity for waivers or another system to accommodate exceptions to a general rule. It should also be noted that nothing in this interim rule mandates that State agencies implement a specific schedule, or that they elect to establish one at all.

With regard to outside-school-hours care centers, since this rule will provide State agencies with the clear authority to establish any time of meal service requirements they believe are necessary, there is no longer a need for separate Federal restrictions on the time of meal service in outside-school-hours care centers. Therefore, this rule will eliminate the long-standing time restrictions on outside-school-hours care center meal service at § 226.19(b)(6). This change is consistent with the statutory recognition, discussed above, that both at-risk and outside-school-hours facilities often provide drop-in services that differ substantially from more structured forms of child care, and will leave to State agencies the determination as to what type of time restrictions, if any, are appropriate for the various types of facilities participating in CACFP.

Therefore, this interim rule incorporates into the regulation § 226.20(k) the same language as proposed, which clarified State agencies' authority to establish limits on the duration of meal service periods and the time between meal services. It also eliminates the time restrictions placed on meal services at outside-school-hours care centers at § 226.19(b)(6).

C. Reimbursement to Centers When Approved for Participation

What Are the Current Rules Pertaining to Reimbursement of New Centers?

Current § 226.11(a) states that State agencies provide reimbursement for meals served in centers (whether independent centers or sponsored centers) only when the institution (the independent center or the sponsor of centers) is operating under an agreement with the State agency for meal types specified in the agreement. However, § 226.11(a) also gives State agencies the option to reimburse centers for meals served in the calendar month preceding the calendar month in which the agreement is executed, provided that the center has records to document participant eligibility, the number of meals served, and that the meals met Program requirements.

Why Did the Department Propose a Change to This Provision?

State agencies have expressed concern that the current regulation's wording limits their flexibility by:

- Establishing an expectation that centers will always be paid for meals served in the calendar month preceding execution of the agreement; and
- Not specifically citing the State agency's authority to make payments only after the execution of an agreement with an institution.

We agreed with the first concern and disagreed with the second. Therefore, we proposed language that was intended to clarify that State agencies are required to begin reimbursing centers for meals when a Program agreement is signed, and when all Program requirements are being met. This was not intended to eliminate a State agency's option to reimburse a center for meals served in accordance with all Program requirements in the month prior to executing an agreement with the center. Rather, it was intended to clarify that State agencies could choose either approach—either to reimburse all centers only for meals served in accordance with all requirements after an agreement is executed, or to reimburse all centers for meals served in accordance with all requirements in the month prior to the month in which an agreement is executed.

How Did Commenters Respond to This Proposal?

We received a total of 15 comments on this provision, all from State agency staff in 10 different States. Although 11 commenters supported the proposal, several of those who supported the proposal, and all of those who disagreed with the proposal, mistakenly believed that the option to reimburse centers for meals served in the month prior to executing an agreement had been removed. In fact, our intent, as stated above, was to clarify that the State agency develop a policy based on either of these two approaches. To better clarify our intent, this interim rule modifies the last sentence of § 226.11(a).

This revised language should clarify that the State agency has two options: (1) To develop a policy that allows centers to earn reimbursement for meals served in the month preceding the month in which the agreement is executed, and to reimburse centers for those meals after an agreement has been executed; or (2) to develop a policy that permits centers to earn reimbursement only for eligible meals served on or after the date an agreement is executed. Please note that we issued guidance on May 14, 2001, that extends similar options to the reimbursement of day care homes for meals.

Accordingly, this interim rule modifies the language at § 226.11(a) pertaining to the reimbursement of meals served in centers.

D. Regulations and Guidance

What Did the Department Propose?

Section 226.6(l) makes State agencies responsible for monitoring institutions' compliance with Program regulations ''and with any applicable instructions of FNS and the Department.'' These instructions interpret existing rules by clarification or explanation and do not impose new substantive requirements. Although this requirement and case law have demonstrated that State agencies have the authority and the responsibility to apply Federal guidance that interprets the regulations and the law, we proposed regulatory language at §§ 226.6(l) and 226.15(m) that underscored this fact. Comparable regulatory language already exists in other programs, such as the Summer Food Service Program (*see* 7 CFR 225.15(a)). The governing statute for CACFP may be found at *http://www.fns.usda.gov/cnd/Governance/nslp-legislation.htm;* Program regulations may be found at *http://www.fns.usda.gov/cnd/Care/Regs-Policy/new226.pdf* and Program guidance may be found at *http://www.fns.usda.gov/cnd/Care/Regs-Policy/policy.htm* or by contacting the State agency or the Food and Nutrition Service.

How Did Commenters Respond to This Proposal?

A total of 21 commenters responded, with 17 in support of the proposal and four in opposition. Of the 17 commenters in favor (15 State agencies and two sponsors/other institutions), three requested that we add language clarifying that State agencies have authority to impose additional requirements, provided that they are not in conflict with the Federal regulations. This wording is unnecessary, however, since the proposed changes referred to the State's authority to monitor compliance with regulations, instructions, and handbooks issued by the State agency which are consistent with the CACFP regulations. In addition, existing § 226.25(b) permits State agencies to add requirements for participation, provided that they are consistent with the Federal regulations and are approved by the FNS regional office.

The four commenters who disagreed (two State agencies and two sponsors/other institutions) stated that any form of guidance not promulgated through the rulemaking process was not enforceable. This is precisely the misconception that our proposed regulatory language was meant to address. In fact, the Administrative Procedures Act (5 U.S.C. 553) specifically exempts ''interpretative rules'' and ''general statements of policy'' from publication in the **Federal Register**. State agencies issuing handbooks and other guidance must ensure that they comply with both Federal and State law governing such publications, and that they do not conflict with the intent of any Federal Program or other requirement. Furthermore, the State's procedural rules must not diminish, contradict, or impose additional eligibility requirements for institutions that would otherwise be eligible under Federal requirements. For example, based on identified problems, a State agency could impose additional monitoring requirements, but could not require a new independent center to post a performance bond as a condition of eligibility.

By stipulating that institutions must comply with instructions, guidance, and handbooks issued in accordance with

regulations, we are emphasizing the authority of the Department and State agencies to issue such rules and statements of policy through the publication of handbooks and other forms of instruction. We have changed the language of the proposed rules to clarify this point.

Accordingly, this interim rule implements the changes as proposed. As a result of changes promulgated in the interim rule published on June 27, 2002, these provisions appear at §§ 226.6(m)(3)(iv) [formerly the introductory paragraph of proposed § 226.6(l)(2)] and 226.15(m).

E. Sponsor Disbursement of Food Payments to Providers

What Are the Rules Governing Sponsors' Disbursement of Meal Service Payments to Family Day Care Homes?

The regulations at §§ 226.13(c) and 226.18(b)(7) state that sponsoring organizations of family day care homes must disburse the full amount of meal service earnings to providers except that, with the day care home provider's prior written consent, § 226.18(b)(7) stipulates that the sponsor may deduct the costs of providing meals or foodstuffs to the provider. In recent years, we have been asked whether the regulations would permit sponsors:

- To temporarily retain some portion of the providers' meal service payments; or
- With or without prior written consent, to subtract the costs of other goods or services (*e.g.,* liability insurance premiums, toys, or educational materials) provided to the family day care provider; or
- To withhold part or all of a provider's reimbursement if the provider fails to attend training, or otherwise violates regulatory provisions.

The intent of the current regulations is to prohibit any retention of meal service payments received by the family day care home sponsoring organization from the State agency, except in the single specific instance described in the regulations (there is a written agreement for the provision of meals or foodstuffs by the sponsor to the provider) or in the more general circumstance of a provider having submitted a claim that is erroneous or invalid. All of these circumstances are also set forth in FNS Instruction 796–2, revision 3, section IX(B)(3)(c).

We are well aware that sponsors often sell other goods or services to family day care home providers, including providers they do not sponsor. However, there is no reason for the government to facilitate transactions through the retention of food service payments provided under the CACFP. Such practices are not intended by section 17 of the NSLA, and we intend there to be no exceptions save that mentioned in the current rule. Therefore, we proposed to amend § 226.18(b)(7) to further clarify the limitations on sponsoring organizations' temporary or permanent retention of meal service payments, except when it is expressly permitted by the regulation.

What Comments Did You Receive on These Proposed Changes?

We received a total of 73 comments on this proposed change, 11 from State agencies and 62 from sponsoring organizations or other institutions. All commenters supported the change, though many of the sponsor/institution comments requested that we add language permitting sponsors to withhold claims without State agency permission, either due to other violations of regulations, such as failure to attend required training, or due to the day care home's submission of an invalid claim.

As discussed above (*see* part II(G) of this preamble, above), as a result of ARPA, suspension of payments (*i.e.,* cutting off all payments to a provider) is not permitted except when the provider is found to have created an imminent threat to public health or safety. Furthermore, the NSLA does not permit the withholding of payments to a provider based on the provider's failure to attend training. Instead, the sponsor's recourse in such a case is to give the provider time to come into compliance, then to declare the provider seriously deficient if the provider remains in noncompliance.

However, we did not intend to limit the sponsor's ability to deny payments to a provider who has submitted an invalid claim. We agree with commenters that our proposed language stating that the denial of invalid claims could only occur with the State agency's prior consent presents an unnecessary impediment to sponsors' effective management of the Program, and that language has been removed from this interim rule.

Accordingly, this interim rule incorporates the language proposed at § 226.18(b)(7), with the change discussed above.

F. Technical Changes

We received no negative comments regarding our proposal to eliminate obsolete adult day care provisions at § 226.25(g), nor did we receive any recommendations for clarification. Therefore, we will adopt our proposed regulatory language in this interim rule.

We also added a second technical change to this interim rule. Section 226.6(o) was amended to reflect the changes to serious deficiency and suspension procedures mandated by the Agricultural Risk Protection Act of 2000.

Part IV. Non-Discretionary Changes Required by PRWORA, the Healthy Meals Act, and the Goodling Act

In addition to the discretionary changes discussed in parts I-III of this preamble, the proposed rule also included a number of non-discretionary changes as well. Non-discretionary changes are those that are specifically mandated by law, and the Department, therefore, must include these provisions in the Program regulations. Although the Department could have issued these non-discretionary changes in an interim or a final rule, without first soliciting public comment, we included these provisions in the proposal, both as a matter of convenience and as a means of gathering comment on the manner in which we were proposing to implement several of these provisions.

A. Issuance of Advances to Institutions Participating in CACFP

What Did You Propose With Respect to Advances?

As discussed in part I(A) of the preamble, above, we proposed to implement a statutory change relating to advances that was promulgated in section 708(f)(2) of PRWORA. Prior to the PRWORA's passage, State agencies were required to issue advance payments for CACFP to institutions that requested them. However, due to findings that advances were being abused in some cases, the NSLA was amended by PRWORA to make the issuance of advances optional. As we explained in the preamble to the proposed rule, State agencies may elect to issue advances to all institutions, no institutions, specific types of institutions, or institutions with records of adequate Program administration. Only when a State agency denies an advance to an institution based on the institution's Program performance would it be necessary to offer an appeal of the State agency's decision.

How Did Commenters Respond to the Proposal?

We received 12 comments on this provision, 11 of which were favorable. The commenter who objected believed that State agencies should not be provided with this latitude, and that

institutions with successful Program performance should be guaranteed an advance if they apply for one. However, as previously noted, the NSLA now makes advances optional at the State agency's discretion.

Of the commenters who agreed with the proposal (six State agencies, four sponsors, and one State organization), seven requested that additional language be included in the regulations. Five commenters asked that the regulations state that State agencies could also elect only to make available operating advances or administrative advances. Another commenter suggested that the regulations state specifically that the State agency may refuse to issue any advances whatsoever. We have already issued guidance (dated January 27, 1997) that clarified that State agencies had a variety of options in implementing this provision. It would certainly be possible for a State agency to issue operating advances only, administrative advances only, or no advances at all. Any of these options would prevent a State agency from having to offer an appeal to an institution requesting an advance that was not available to similar institutions. We also have issued periodic guidance on the matter of collecting advances.

What is at issue is whether it would be advantageous for any or all of this information to be codified in the Program regulations. In general, we prefer to address detailed procedural aspects of implementation in interpretive guidance, rather than in the regulations, as previously discussed. FNS also has training and regional office dialogue with State agencies as methods for addressing such inquiries and issues. For that reason, we are implementing this regulatory change as proposed at § 226.10(a).

B. Change to Method of Rounding Meal Rates in Centers

What Did the Department Propose?

Section 704(b)(1) of PRWORA amended section 11(a)(3)(B) of the NSLA by changing the method to be used by the Department in making annual adjustments to the national average payment rate for paid meals served in the NSLP and SBP. This change also affected the method of rounding used to calculate the annual adjustment to the rate for paid meals served in child care centers and adult day care centers participating in the CACFP because, under sections 17(c)(1) through (c)(3) and 17(o)(3) of the NSLA, these rates are linked to the rates and rounding methods established in section 11(a)(3)(B). Later, section 103(b) of the Goodling Act extended the same rounding procedure to the free and reduced-price meal rates in NSLP, SBP, and the center-based component of CACFP, effective July 1, 1999. Therefore, we proposed to modify the language at § 226.4(g)(2) of the regulations to reflect this change. In addition, we proposed to change the word ''supplements'' to ''meals'' at § 226.4(g)(2) of the regulations since this paragraph is clearly intended to describe the method of adjusting and rounding the rates for all meals (not just snacks/supplements) served in child and adult day care centers.

How Did Commenters Respond?

We received a total of three comments on this provision, all from State agencies. All approved of the change, but one commenter questioned why we were not making a similar change to the method of rounding meals served in day care homes. In fact, we have made this change at § 226.4(g)(1) as a statutorily-mandated part of the implementation of the two-tiered system of reimbursement for family day care homes (62 FR 889, January 7, 1997). Therefore, we will adopt in the provision as proposed in this interim rule at § 226.4(g)(2).

C. Elimination of Aid to Families With Dependent Children (AFDC) Program

What Did You Propose, and How Did Commenters Respond?

As a result of PRWORA, the Federal AFDC Program was block granted and its name was changed to Temporary Assistance for Needy Families (TANF). This change requires us to change all references to ''AFDC'' and ''AFDC assistance units'' in the rule and to replace them with ''TANF'' and ''TANF recipient.''

We received three comments in favor of this mandatory change, and this interim rule will make this change to our regulatory language as proposed.

D. State Agency Outreach Requirements

What Did the Department Propose?

Section 708(a) of PRWORA amended the statutory purpose statement for CACFP by amending section 17(a) of the NSLA. Previously, the law stated that the purpose of CACFP was to assist States to initiate, maintain, and expand nonprofit food service programs for children in child care. Section 708(a) deleted the words ''and expand'' from this sentence. In addition, section 708(h) of PRWORA revised section 17(k) of the NSLA in its entirety. Previously, this section of the NSLA had required State agencies to facilitate expansion and to annually notify each nonparticipating institution of the Program's availability, the requirements for participation, and the procedures for application. As a result of this change, the NSLA now requires State agencies to provide sufficient training, technical assistance, and monitoring of the CACFP.

Did This Change Eliminate Outreach From the CACFP?

No. State agency outreach is still an allowable and desirable Program activity. Although PRWORA removed two specific requirements for State agency outreach, it also underscored the State agency's responsibility to promote Program expansion in low-income and rural areas. Prior to PRWORA, the NSLA had been amended to make additional funds available to sponsoring organizations of day care homes for expansion into rural or low-income areas. A later amendment permitted day care home sponsors to use their administrative funds to defray the licensing-related costs of non-participating low-income day care home providers. The PRWORA underscored Congress' commitment to these provisions by mandating that we publish interim regulations implementing these changes and giving them the force of law, which was done in 1998 (63 FR 9721, February 26, 1998). Thus, although the specific requirement for State agencies to notify non-participating institutions was removed, the law continues to promote program expansion among rural and low-income family day care home providers.

Based on these congressional actions, we proposed to modify two paragraphs within § 226.6, which sets forth State agency responsibilities. We proposed to amend § 226.6(a) to require that State agencies continue to commit sufficient resources to facilitate Program expansion in low-income and rural areas, and proposed to amend § 226.6(g) to eliminate the language requiring that State agencies take specific actions to facilitate expansion, while retaining the broader requirement that State agencies take action to expand the availability of Program benefits Statewide, and especially in low-income and rural areas. We believe that these changes meet congressional intent to eliminate the broad requirement that State agencies expand the Program, and to substitute a requirement for targeted expansion in low-income and rural areas.

How Did Commenters Respond to These Proposals?

We received seven comments on this provision—four from sponsors or other

institutions, two from State agencies, and one from a State organization. All commenters favored this change, but five of the seven commenters believed that we should also include outreach to Tier II homes as a State agency requirement. These commenters stated that the recruitment and retention of Tier II homes had become much more difficult after the introduction of the two-tiered reimbursement system in family day care homes.

Although we are aware that many sponsors have expanded their efforts to recruit and retain Tier II homes in recent years, we do not believe that the wording of the NSLA would support our requiring State agencies to engage in these efforts. Because of the NSLA's continued emphasis on Program expansion in low-income and rural areas, a requirement for State agency action to facilitate growth in Tier II areas is not warranted. State agencies could elect to use State administrative resources in support of other expansion efforts; however, they are only required to make such efforts in low-income and rural areas. Therefore, we will adopt in this interim rule the language we proposed at §§ 226.6(a) and 226.6(g).

E. Prohibition on Payment of Incentive Bonuses for Recruitment of Family Day Care Homes

Why Did USDA Propose this Change?

Section 708(b) of PRWORA amended section 17(a)(6)(D) of the NSLA by prohibiting any family day care home sponsoring organization which employs more than one person from basing payment to employees on the number of family day care homes recruited. These terms were not defined by Congress, permitting us to broadly construe the terms ''employee'' and ''payment''. For example, sponsoring organizations often pay individuals (including family day care home providers whom they sponsor for CACFP) to perform specific program functions, such as training, monitoring, or recruitment through a contractual arrangement. Although that person is not a full-time employee of the family day care home sponsoring organization, we nevertheless believe that they are covered by this prohibition. We are also aware that sponsor employees can be paid in a variety of ways (*e.g.*, salaries, hourly wages, or on a piece-work basis). It is our position that Congress intended to prohibit any type of payments (including bonuses, contract incentives, free trips, or any other perquisite or gratuity) under any compensation system if the payment is based on recruitment activities performed by any full-time or part-time employee, contractor, or family day care home provider.

Can Sponsors Still Use Administrative Funds for Recruitment?

Yes. The recruitment of family day care home providers to participate in CACFP is still an allowable expense, as long as (as noted in the preamble to the interim rule published on June 27, 2002) the provider is not currently participating in CACFP. In fact, as noted in the previous part of this preamble, the NSLA continues to encourage recruitment of non-participating providers in low-income and rural areas. This means that family day care home sponsors are permitted to pay employees or contractors to perform recruitment functions. However, the person being paid cannot be reimbursed solely on the basis of the number of homes recruited. Similarly, including the number of homes recruited as an evaluation factor when measuring an employee or contractor's performance is permissible, whereas providing a bonus or award for recruiting a certain number of homes would not be permissible. Therefore, we proposed to amend the regulations at § 226.15 by adding a new paragraph, (g), which prohibits sponsoring organizations of family day care homes from making payments to employees or contractors solely on the basis of the number of family day care homes recruited.

What Comments Did You Receive on This Proposal?

We received a total of eight comments (six from sponsors or other institutions, two from State agencies) on this provision. Seven were positive and one was opposed to the change; however, the commenter who opposed the change was a sponsor who mistakenly believed that the proposal would prevent her from paying employees based on the number of homes they monitor. In fact, all systems of compensation are allowable unless they are based on the number of homes recruited. Another commenter asked whether this provision would prohibit a sponsor from paying a provider a bonus for recruiting other providers. If the sole condition for receiving the bonus was the number of day care homes that began participating with the sponsor, the bonus would not be permitted.

Accordingly, this interim rule adopts the language at § 226.15(g) as proposed, and redesignates § 226.15(g) through (k) as § 226.15(h) through (l), respectively.

F. Pre-Approval Visits by State Agencies to Private Institutions

What Did You Propose to Change Regarding State Agency Pre-Approval Visits to New Institutions?

Section 107(c) of the Goodling Act amended section 17(d) of the NSLA (42 U.S.C. 1766(d)) to require State agencies to visit private institutions (both non-profit and for-profit) applying for the first time prior to their approval to participate in CACFP.

We believe that the change made to § 226.6(m)(2) (formerly § 226.6(l)(2) in the interim rule published on June 27, 2002) which requires State agencies to target for more frequent reviews those institutions whose prior review included a finding of serious deficiency, goes far towards fulfilling the second statutory requirement. With regard to the requirement for pre-approval visits to private institutions, we believe that Congress intended to exclude from this requirement both public institutions and institutions which are adult day care centers, and to focus additional State agency oversight on child care institutions, and especially on sponsors. The Conference Report language (Conf. Report 105–786, October 6, 1998) focuses throughout on the Program management problems documented in OIG audits. These audits have been confined to family child care homes and/or child care centers because these organizations account for such a large share of Program reimbursements.

We recognized that requiring State agencies to conduct a pre-approval visit of each new independent center, especially in geographically large and rural States, could result in delays in approving such centers. Therefore, we addressed this issue in Program guidance issued on July 14, 1999. That guidance set forth various ways in which the pre-approval requirement might be met for independent centers (including obtaining information gathered by the State licensing agency in its previous visit(s) to the center), and described certain circumstances under which we would be willing to entertain State agency requests to waive the pre-approval requirement for one or more independent centers. Thus, the guidance provides State agencies with options for meeting the legal requirement with respect to independent centers, but ensures that a pre-approval visit to sponsoring organizations by the State agency will always occur.

What Comments Did You Receive on This Provision?

We received four comments on this provision, all from State agencies. One commenter suggested that we consider modifying the rule to require visits to institutions that are adult day care centers, and another suggested the addition of both adult day care institutions and publicly-administered child care institutions. A third commenter noted the administrative burden on State agencies in implementing this provision.

While there could be some benefit to extending the scope of this requirement, the Goodling Act clearly stated that the requirement applies to private child care institutions. State agencies may, of course, choose to conduct pre-approval visits to adult day care or public child care institutions, provided that approval or denial is not delayed due to the State agency's inability to perform the pre-approval visit in a timely fashion. Therefore, this interim rule implements our regulatory language as proposed. Due to the further re-organization of § 226.6(b) in this interim rule, the provision will appear in the introductory paragraph of § 226.6(b)(1).

G. Provision of Information on the WIC Program

Why Did You Propose To Require the Distribution of Information on the WIC Program?

Section 107(i) of the Goodling Act required us to provide State agencies with information concerning the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program. The Goodling Act also required State agencies to ensure that each participating facility and independent child care center (other than outside-school-hours care centers) receive materials that explain WIC's importance, its income eligibility guidelines, and how to obtain benefits. In addition, State agencies were required to provide these facilities and institutions with periodic updates of this information and to ensure that the parents of enrolled children receive this information.

On April 14, 1999, we provided the required information on WIC to each State agency administering the CACFP. We proposed to amend § 226.6(q) to require that State agencies distribute this information to each child care institution participating in the Program, and § 226.15(n) to require that the institution make this information available to each sponsored facility (except sponsored outside-school-hours care centers), and to ensure that institutions and/or facilities make this information available to the households of participating children.

How Did Commenters Respond to These Proposals?

We received four comments on these proposals, three from State agencies and one from a sponsor. Two comments (one from a State agency and the sponsor comment) were favorable, and two expressed opposition to the provision. One of these opposed the administrative cost of distributing the information, and felt that it should be borne by the WIC Program; another stated that parents eligible for WIC were already well aware of the Program. However, distribution of this information is required by the NSLA; therefore, we will adopt our regulatory language as proposed, at §§ 226.6(q) and 226.15(n).

H. Audit Funding for State Agencies

What Change Did You Propose To Audit Funding for State Agencies?

Section 107(e) of the Goodling Act amended section 17(i) of the NSLA (42 U.S.C. 1766(i)) by reducing the amount of audit funding made available to State agencies. Prior to this change, State agencies could receive up to two percent of Program expenditures during the preceding fiscal year to conduct Program audits. This was changed to one and one-half percent of Program expenditures in the previous fiscal year, beginning in fiscal year 1999. In addition, in order to meet mandatory ten-year budget targets, the Goodling Act also mandated a further reduction (to one percent) in fiscal years 2005 through 2007, but it was unclear whether the reduction for fiscal years 2005–2007 would occur. Therefore, we proposed to amend § 226.4(h) by removing the words ''2 percent'' and substituting in their place the words ''1.5 percent'.

However, it now appears that the reduction to 1 percent funding will occur in fiscal years 2005–2007. Therefore, this interim rule incorporates language at § 226.4(h) that refers to the 1 percent funding level for fiscal years 2005–2007.

How Did Commenters Respond?

We received only one comment, from a State agency, on this provision. That commenter observed that every effort must be made to safeguard 1.5 percent audit funds during fiscal years 2005–2007. However, because the reduction to 1 percent is likely to occur, as noted above, the language of § 226.4(h) has been amended to reflect the lower levels of funding for fiscal years 2005–2007.

I. Elimination of Fourth Meal in Child Care Centers

Section 708(d) of PRWORA amended section 17(f)(2)(B) of the NSLA by eliminating child care centers' ability to claim reimbursement for four meals (either two meals and two snacks or three meals and one snack) served to a single child in a day. Prior to this change, child care centers and outside-school-hours care centers had been permitted to claim reimbursement for a fourth meal served to a child who had been maintained in care for eight or more hours on that day.

We neglected to include this change in our proposed rule. However, since it is non-discretionary, we have included it in this interim rule for implementation in keeping with the congressional mandate.

Accordingly, this rule amends §§ 226.15(e)(5), 226.17(b)(3), and 226.19(b)(5) to eliminate outdated references to a fourth meal.

Part V. Procedural Matters

Executive Order 12866

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

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The CACFP is administered by State agencies and by over 18,000 institutions (sponsoring organizations and independent centers) in over 210,000 facilities. The vast majority of institutions and facilities participating in CACFP are small in size. Nevertheless, the changes implemented in this interim rule will not have a significant economic impact, except where improved monitoring procedures lead State agencies to terminate institutions' agreements or sponsoring organizations terminate their facilities' agreements. In short, there will be little or no adverse impact on those entities administering the CACFP in accordance with Program requirements, since most of these changes were proposed in order to improve compliance with existing regulations and in accordance with statutory changes to Program operations.

This rule will primarily affect the procedures used by State agencies in reviewing institutions' applications to

participate in CACFP and in monitoring participating institutions' performance. This rule will also affect participating institutions' operation of the CACFP. These changes will not, in the aggregate, have a significant economic impact on small entities.

Regulatory Impact Analysis

This rule implements a number of changes to existing Program regulations, as proposed in our rulemaking of September 12, 2000 (65 FR 55101), and as modified in this rule as a result of public comment. These changes will affect all entities involved in administering the CACFP; those most affected will be State agencies, institutions, and facilities.

Despite the conduct of numerous OIG audits and State and FNS reviews, there is no statistically representative information available on CACFP integrity. OIG reports have focused on purposely-selected institutions and facilities, and reviews conducted by State agencies and management evaluations conducted by FNS are not designed to capture information for the purpose of developing Nationally-valid estimates of fraud or mismanagement. While the OIG and other reports clearly indicate that there are weaknesses in parts of the Program regulations, and that there have been significant weaknesses in oversight by some State agencies and sponsoring organizations, none of these reports estimate the prevalence or magnitude of USDA fraud, abuse, or mismanagement.

This lack of information makes it difficult for us to estimate the amount of CACFP reimbursement lost due to fraud, abuse, or mismanagement. For that reason, the fiscal impact of these provisions cannot be estimated.

Executive Order 12372

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (part 3015, Subpart V, of this title, and final rule related notice published in 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories enumerated in § 6(a)(B) of Executive Order 13132:

Prior Consultation With State Officials

Prior to drafting this interim rule, we received input from State and local agencies at various times. Since the CACFP is a State administered, Federally funded program, our regional offices regularly have formal and informal discussions with State and local officials regarding Program implementation and performance. This allows State and local agencies to contribute input that helps to influence our discretionary rulemaking proposals, the implementation of statutory provisions, and even our own Departmental legislative proposals. In addition, over the past nine years, our headquarters staff informally consulted with State administering agencies, Program sponsors, and CACFP advocates on ways to improve Program management and integrity in the CACFP. Discussions with State agencies took place in the joint Management Improvement Task Force meetings held between 1995 and 2000; in four biennial National meetings of State and Federal Program administrators (Seattle in 1996, New Orleans in 1998, Chicago in 2000, and New York in 2002); at the December 1999 meeting of the State Child Nutrition Program administrators in New Orleans, and in a variety of other small- and large-group meetings. Discussions with Program advocates and sponsors occurred in the Management Improvement Task Force meetings held in 1999–2000; in annual National meetings of the Sponsors Association, the CACFP Sponsors Forum, and the Western Regional Office-California Sponsors Roundtable from 1995 to the present; and in a variety of other small- and large-group meetings.

Nature of Concerns and Need To Issue This Rule

The issuance of a regulation is necessary to improve Program management and, more specifically, to respond to management problems identified by State and local Program administrators and by OIG. Many of the individual provisions were discussed in the meetings with State and local cooperators mentioned above. Although comments on the proposed rule indicated that State agencies and local sponsoring organizations had some concerns about some of our proposals, we have made appropriate adjustments to those proposals and have addressed these concerns in this interim rule.

Extent to Which We Meet Those Concerns

FNS has considered the impact of these changes on State and local administering agencies, and has attempted to balance Program integrity concerns with the need to maintain Program access for capable institutions and family day care homes, and to ensure that improvements in accountability do not place undue burdens on State and local Program administrators. The preamble above contains a more detailed discussion of our attempt to balance integrity and access concerns, while implementing these provisions in a manner consistent with both the letter and the intent of the NSLA. Major adjustments made by this interim rule in response to public comment are discussed at length, especially in part II of the preamble.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires 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, the Food and Nutrition Service must usually prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in new annual expenditures of $100 million or more by State, local, or tribal governments or the private sector. When such a statement is needed, section 205 of the UMRA requires the Food and Nutrition Service to identify and consider regulatory alternatives that would achieve the same result.

This rule contains no Federal mandates (as defined in title II of the UMRA) that would lead to new annual expenditures exceeding $100 million for State, local, or tribal governments or the private sector. Therefore, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Dates'' section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule

or the application of its provisions. This includes any administrative procedures provided by State or local governments. In the CACFP, the administrative procedures are set forth at: (1) Sections 226.6(k), 226.6(l), and 226.16(l) which establish administrative review procedures for institutions, individuals, and day care homes; and (2) § 226.22 and 7 CFR part 3015, which address administrative review procedures for disputes involving procurement by State agencies and institutions.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted to the Office of Management and Budget (OMB) for approval. Written comments on the information collection requirements in this rule must be received on or before (insert 60 days after publication of this interim rule) by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 3208 New Executive Office Building, Washington, DC 20503, Attention: Ms. Katherine Astrich, Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their remarks on information collection requirements from their comments on the remainder of the interim rule.

OMB is required to make a decision concerning the collection of information in this rule between 30 to 60 days after its publication in the **Federal Register**. Therefore, a comment to OMB is most likely to be considered if OMB receives it within 30 days of the publication of this interim rule. This does not affect the 180-day deadline for the public to comment to the Department on the substance of the interim rule.

Comments are invited on: (a) Whether the collection of information is necessary for the Agency to perform its functions of the agency and will have practical utility; (b) the accuracy of the Agency's estimate of the burden of collecting the information, including whether its methodology and assumptions are valid; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The title and description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR part 226, Child and Adult Care Food Program.

OMB Number: 0584–0055.

Expiration Date: January 31, 2007.

Type of request: Revision of existing collections.

Abstract: This rule revises: State agency criteria for approving and renewing institution applications; State- and institution-level monitoring requirements; Program training and other operating requirements for child care institutions and facilities; and other provisions which we are required to change as a result of the Healthy Meals Act, the PRWORA, and the Goodling Act. The changes are intended to improve Program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify Program requirements for State agencies and institutions.

Estimated Total Annual Burden on Respondents:

Total Existing Burden Hours: 107,844.

Total Proposed Burden Hours: 111,398.

Total Difference: 3,654 hours.

Government Paperwork Elimination Act Compliance

FNS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 2. In part 226:

■ a. Remove the words ''AFDC case number'' wherever they appear and add, in their place, the words ''TANF case number''.

■ b. Remove the words ''AFDC recipiency'' wherever they appear and add, in their place, the words ''TANF recipiency''.

■ c. Remove the words ''AFDC Program'' wherever they appear and add, in their place, the words TANF Program''.

■ 3. In § 226.2:

■ a. The definition of AFDC assistance unit is removed.

■ b. The word ''enrolled'' is removed from the definition of *Outside-school-hours care center.*

■ c. New definitions of *Block claim* and *Household contact* are added in alphabetical order.

■ d. The definition of ''Documentation'' is amended in paragraph (b) by removing the words ''an AFDC assistance unit'' and adding in their place the words ''who is a TANF recipient''.

■ e. The definition of *TANF recipient* is added in alphabetical order.

■ f. The definition of ''verification'' is amended by removing the words ''AFDC assistance unit'' and adding in their place the words ''is a TANF recipient''.

The revision and additions specified above read as follows:

§ 226.2 Definitions.

* * * * *

Block claim means a claim for reimbursement submitted by a facility on which the number of meals claimed for one or more meal type (breakfast, lunch, snack, or supper) is identical for 15 consecutive days within a claiming period.

* * * * *

Household contact means a contact made by a sponsoring organization or a State agency to an adult member of a household with a child in a family day care home or a child care center in order to verify the attendance and enrollment of the child and the specific meal service(s) which the child routinely receives while in care.

* * * * *

TANF recipient means an individual or household receiving assistance (as defined in 45 CFR 260.31) under a State-administered Temporary Assistance to Needy Families program.

* * * * *

■ 4. In § 226.4:

■ a. Paragraph (g)(2) is amended by removing the word ''supplements'' and adding in its place the word ''meals'', and by removing the second sentence and adding two new sentences in its place.

■ b. Paragraph (h) is revised.

The addition and revision specified above read as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(g) * * *

(2) * * * Such adjustment must be rounded to the nearest lower cent, based on changes measured over the most recent twelve-month period for which data are available. The adjustment to the rates must be computed using the unrounded rate in effect for the preceding year.

* * * * *

(h) *Audit funds.* For the expense of conducting audits and reviews under § 226.8, funds shall be made available to each State agency in an amount equal to one and one-half percent of the Program reimbursement provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. In fiscal years 2005–2007, for the expense of conducting audits and reviews under § 226.8, funds shall be made available to each State agency in an amount equal to one percent of the Program reimbursement provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. The amount of assistance provided to a State under this paragraph in any fiscal year may not exceed the State's expenditures under § 226.8 during such fiscal year.

* * * * *

■ 5. In § 226.6:

■ a. Paragraphs (a) and (b) are revised.

■ b. Paragraphs (c)(2)(ii)(B) and (c)(3)(ii)(C) are amended by removing the reference ''paragraph (b)(18) of this section'' wherever it appears and adding, in its place, the reference ''paragraphs (b)(1)(xvii) and (b)(2)(vii) of this section''.

■ c. Paragraphs (c)(7)(ii), (c)(7)(iii), (c)(7)(iv)(A), (c)(7)(iv)(B), and (c)(7)(iv)(C) are amended by removing the reference ''paragraph (b)(12) of this section'' wherever it appears and adding, in its place, the reference ''paragraphs (b)(1)(xi) and (b)(2)(ii) of this section''.

■ d. Paragraphs (f) and (g) are revised.

■ e. Paragraph (h) is amended by revising the first sentence and by adding a new sentence after the first sentence.

■ f. Paragraphs (j) and (m) are revised.

■ g. The second and third sentences of paragraph (o) are revised.

■ h. A new paragraph (r) is added.

The additions and revisions specified above read as follows:

§ 226.6 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency must provide sufficient consultative, technical, and managerial personnel to:

(1) Administer the Program;

(2) Provide sufficient training and technical assistance to institutions;

(3) Monitor Program performance;

(4) Facilitate expansion of the Program in low-income and rural areas; and

(5) Ensure effective operation of the Program by participating institutions.

(b) *Program applications and agreements.* Each State agency must establish application review procedures, in accordance with paragraphs (b)(1) through (b)(3) of this section, to determine the eligibility of new institutions, renewing institutions, and facilities for which applications are submitted by sponsoring organizations. The State agency must enter into written agreements with institutions in accordance with paragraph (b)(4) of this section.

(1) *Application procedures for new institutions.* Each State agency must establish application procedures to determine the eligibility of new institutions under this part. At a minimum, such procedures must require that institutions submit information to the State agency in accordance with paragraph (f) of this section. For new private nonprofit and proprietary child care institutions, such procedures must also include a pre-approval visit by the State agency to confirm the information in the institution's application and to further assess its ability to manage the Program. The State agency must establish factors, consistent with § 226.16(b)(1), that it will consider in determining whether a new sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the review of the sponsoring organization's management plan, the State agency must determine the appropriate level of staffing for each sponsoring organization, consistent with the staffing range of monitors set forth at § 226.16(b)(1) and the factors it has established. The State agency must ensure that each new sponsoring organization applying for participation after July 29, 2002 meets this requirement. In addition, the State agency's application review procedures must ensure that the following information is included in a new institution's application:

(i) *Participant eligibility information.* Centers must submit current information on the number of enrolled participants who are eligible for free, reduced-price and paid meals;

(ii) *Enrollment information.* Sponsoring organizations of day care homes must submit current information on:

(A) The total number of children enrolled in all homes in the sponsorship;

(B) An assurance that day care home providers' own children whose meals are claimed for reimbursement in the Program are eligible for free or reduced-price meals;

(C) The total number of tier I and tier II day care homes that it sponsors;

(D) The total number of children enrolled in tier I day care homes;

(E) The total number of children enrolled in tier II day care homes; and

(F) The total number of children in tier II day care homes that have been identified as eligible for free or reduced-price meals;

(iii) *Nondiscrimination statement.* Institutions must submit their nondiscrimination policy statement and a media release, unless the State agency has issued a Statewide media release on behalf of all institutions;

(iv) *Management plan.* Sponsoring organizations must submit a complete management plan that includes:

(A) Detailed information on the organization's management and administrative structure;

(B) A list or description of the staff assigned to Program monitoring, in accordance with the requirements set forth at § 226.16(b)(1);

(C) An administrative budget that includes projected CACFP administrative earnings and expenses;

(D) The procedures to be used by the organization to administer the Program in, and disburse payments to, the child care facilities under its sponsorship; and

(E) For sponsoring organizations of family day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement;

(v) *Budget.* An institution must submit a budget that the State agency must review in accordance with § 226.7(g);

(vi) *Documentation of licensing/approval.* All centers and family day care homes must document that they meet Program licensing/approval requirements;

(vii) *Documentation of tax-exempt status.* All private nonprofit institutions must document their tax-exempt status;

(viii) *Documentation of proprietary center eligibility.* Institutions must

document that each proprietary center for which application is made meets the definition of a title XIX center or a proprietary title XX center, as applicable and as set forth at § 226.2;

(ix) *Preference for commodities/cash-in-lieu of commodities.* Institutions must state their preference to receive commodities or cash-in-lieu of commodities;

(x) *Providing benefits to unserved facilities or participants.*

(A) *Criteria.* The State agency must develop criteria for determining whether a new sponsoring organization's participation will help ensure the delivery of benefits to otherwise unserved facilities or participants, and must disseminate these criteria to new sponsoring organizations when they request information about applying to the Program; and

(B) *Documentation.* The new sponsoring organization must submit documentation that its participation will help ensure the delivery of benefits to otherwise unserved facilities or participants in accordance with the State agency's criteria;

(xi) *Presence on National disqualified list.* If an institution or one of its principals is on the National disqualified list and submits an application, the State agency must deny the application. If a sponsoring organization submits an application on behalf of a facility, and either the facility or any of its principals is on the National disqualified list, the State agency must deny the application;

(xii) *Ineligibility for other publicly funded programs.*

(A) *General.* A State agency is prohibited from approving an institution's application if, during the past seven years, the institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for, that program, including the payment of any debts owed;

(B) *Certification.* Institutions must submit:

(*1*) A statement listing the publicly funded programs in which the institution and its principals have participated in the past seven years; and

(*2*) A certification that, during the past seven years, neither the institution nor any of its principals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(*3*) In lieu of the certification, documentation that the institution or the principal previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed; and

(C) *Follow-up.* If the State agency has reason to believe that the institution or its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible;

(xiii) *Information on criminal convictions.*

(A) A State agency is prohibited from approving an institution's application if the institution or any of its principals has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; and

(B) Institutions must submit a certification that neither the institution nor any of its principals has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

(xiv) *Certification of truth of applications and submission of names and addresses.* Institutions must submit a certification that all information on the application is true and correct, along with the name, mailing address, and date of birth of the institution's executive director and chairman of the board of directors;

(xv) *Outside employment policy.* Sponsoring organizations must submit an outside employment policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest. Sponsoring organizations that are participating on July 29, 2002, must submit an outside employment policy not later than September 27, 2002. The policy will be effective unless disapproved by the State agency;

(xvi) *Bond.* Sponsoring organizations applying for initial participation on or after June 20, 2000, must submit a bond, if such bond is required by State law, regulation, or policy. If the State agency requires a bond for sponsoring organizations pursuant to State law, regulation, or policy, the State agency must submit a copy of that requirement and a list of sponsoring organizations posting a bond to the appropriate FNSRO on an annual basis; and

(xvii) *Compliance with performance standards.* Each new institution must submit information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability. To document this, any new institution must demonstrate in its application that it is capable of operating in conformance with the following performance standards. The State agency must only approve the applications of those new institutions that meet these performance standards, and must deny the applications of those new institutions that do not meet the standards.

(A) *Performance Standard 1—Financial viability and financial management.* The new institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), and parts 3015, 3016, and 3019 of this title. To demonstrate financial viability, the new institution must document that it meets the following criteria:

(*1*) *Description of need/recruitment.* A new sponsoring organization must demonstrate in its management plan that its participation will help ensure the delivery of Program benefits to otherwise unserved facilities or participants, in accordance with criteria developed by the State agency pursuant to paragraph (b)(1)(x) of this section. A new sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities, consistent with paragraph (p) of this section and any State agency requirements;

(*2*) *Fiscal resources and financial history.* A new institution must demonstrate that it has adequate financial resources to operate the

CACFP on a daily basis, has adequate sources of funds to withstand temporary interruptions in Program payments and/or fiscal claims against the institution, and can document financial viability (for example, through audits, financial statements, etc.); and

(*3*) *Budgets.* Costs in the institution's budget must be necessary, reasonable, allowable, and appropriately documented;

(B) *Performance Standard 2—Administrative capability.* The new institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part. To demonstrate administrative capability, the new institution must document that it meets the following criteria:

(*1*) Has an adequate number and type of qualified staff to ensure the operation of the Program in accordance with this part;

(*2*) If a sponsoring organization, documents in its management plan that it employs staff sufficient to meet the ratio of monitors to facilities, taking into account the factors that the State agency will consider in determining a sponsoring organization's staffing needs, as set forth in § 226.16(b)(1); and

(*3*) If a sponsoring organization, has Program policies and procedures in writing that assign Program responsibilities and duties, and ensure compliance with civil rights requirements; and

(C) *Performance Standard 3—Program accountability.* The new institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program will operate in accordance with the requirements of this part. To demonstrate Program accountability, the new institution must document that it meets the following criteria:

(*1*) *Board of directors.* Has adequate oversight of the Program by its governing board of directors;

(*2*) *Fiscal accountability.* Has a financial system with management controls specified in writing. For new sponsoring organizations, these written operational policies must assure:

(*i*) Fiscal integrity and accountability for all funds and property received, held, and disbursed;

(*ii*) The integrity and accountability of all expenses incurred;

(*iii*) That claims will be processed accurately, and in a timely manner;

(*iv*) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(*v*) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(*3*) *Recordkeeping.* Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations;

(*4*) *Sponsoring organization operations.* If a new sponsoring organization, documents in its management plan that it will:

(*i*) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with § 226.15(e)(12) and (e)(14) and § 226.16(d)(2) and (d)(3);

(*ii*) Perform monitoring in accordance with § 226.16(d)(4), to ensure that sponsored facilities accountably and appropriately operate the Program;

(*iii*) If a sponsor of family day care homes, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(*iv*) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth at §§ 226.12(a) and 226.16(b)(1); and

(*5*) *Meal service and other operational requirements.* Independent centers and facilities will follow practices that result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities will:

(*i*) Provide meals that meet the meal patterns set forth in § 226.20;

(*ii*) Comply with licensure or approval requirements set forth in paragraph (d) of this section;

(*iii*) Have a food service that complies with applicable State and local health and sanitation requirements;

(*iv*) Comply with civil rights requirements;

(*v*) Maintain complete and appropriate records on file; and

(*vi*) Claim reimbursement only for eligible meals.

(2) *Application procedures for renewing institutions.* Each State agency must establish application procedures to determine the eligibility of renewing institutions under this part. Renewing institutions must not be required to submit a free and reduced-price policy statement or a nondiscrimination statement unless they make substantive changes to either statement. The State agency must require each renewing institution participating in the Program to reapply for participation at a time determined by the State agency, except that no institution may be allowed to participate for less than 12 or more than 36 calendar months under an existing application, except when the State agency determines that unusual circumstances warrant reapplication in less than 12 months. The State agency must establish factors, consistent with § 226.16(b)(1), that it will consider in determining whether a renewing sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the review of the renewing sponsoring organization's management plan, the State agency must determine the appropriate level of staffing for the sponsoring organization, consistent with the staffing range of monitors set forth at § 226.16(b)(1) and the factors it has established. The State agency must ensure that each currently participating sponsoring organization meets this requirement no later than July 29, 2003. At a minimum, the application review procedures established by the State agency must require that renewing institutions submit information to the State agency in accordance with paragraph (f) of this section. In addition, the State agency's application review procedures must ensure that the following information is included in a renewing institution's application:

(i) *Management plan.* For renewing sponsoring organizations, a complete management plan that meets the requirements of paragraphs (b)(1)(iv), (b)(1)(v), (f)(1)(vi), and (f)(3)(i) of this section and § 226.7(g);

(ii) *Presence on National disqualified list.* A renewing institution is prohibited from submitting a renewal application if it or any of its principals is currently on the National disqualified list. If such an institution submits an application, the State agency must deny the application. A renewing sponsoring organization is also prohibited from submitting a renewal application on behalf of a facility if the facility or any of its principals is on the National disqualified list. If a renewing sponsoring organization submits an application on behalf of such a facility, the State agency must deny the facility's application;

(iii) *Ineligibility for other publicly funded programs.*

(A) *General.* A State agency is prohibited from approving a renewing institution's application if, during the

past seven years, the institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for, that program, including the payment of any debts owed;

(B) *Certification.* Renewing institutions must submit:

(*1*) A statement listing the publicly funded programs in which the institution and its principals have participated in the past seven years; and

(*2*) A certification that, during the past seven years, neither the institution nor any of its principals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(*3*) In lieu of the certification, documentation that the institution or the principal previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed; and

(C) *Follow-up.* If the State agency has reason to believe that the renewing institution or any of its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible;

(iv) *Information on criminal convictions.*

(A) A State agency is prohibited from approving a renewing institution's application if the institution or any of its principals have been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; and

(B) Renewing institutions must submit a certification that neither the institution nor any of its principals have been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

(v) *Certification of truth of applications and submission of names and addresses.* Renewing institutions must submit a certification that all information on the application is true and correct, along with the name, mailing address, and date of birth of the institution's executive director and chairman of the board of directors;

(vi) *Outside employment policy.* Renewing sponsoring organizations must submit an outside employment policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest. Sponsoring organizations that are participating on July 29, 2002, must submit an outside employment policy not later than September 27, 2002. The policy will be effective unless disapproved by the State agency;

(vii) *Compliance with performance standards.* Each renewing institution must submit information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability. To document this, any renewing institution must demonstrate in its application that it is capable of operating in conformance with the following performance standards. The State agency must only approve the applications of those renewing institutions that meet these performance standards, and must deny the applications of those that do not meet the standards.

(A) *Performance Standard 1—Financial viability and financial management.* The renewing institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), and parts 3015, 3016 and 3019 of this title. To demonstrate financial viability, the renewing institution must document that it meets the following criteria:

(*1*) *Description of need/recruitment.* A renewing sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities, consistent with paragraph (p) of this section and any State agency requirements;

(*2*) *Fiscal resources and financial history.* A renewing institution must demonstrate that it has adequate financial resources to operate the CACFP on a daily basis, has adequate sources of funds to withstand temporary interruptions in Program payments and/or fiscal claims against the institution, and can document financial viability (for example, through audits, financial statements, etc.); and

(*3*) *Budgets.* Costs in the renewing institution's budget must be necessary, reasonable, allowable, and appropriately documented;

(B) *Performance Standard 2—Administrative capability.* The renewing institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part. To demonstrate administrative capability, the renewing institution must document that it meets the following criteria:

(*1*) Has an adequate number and type of qualified staff to ensure the operation of the Program in accordance with this part;

(*2*) If a sponsoring organization, documents in its management plan that it employs staff sufficient to meet the ratio of monitors to facilities, taking into account the factors that the State agency will consider in determining a sponsoring organization's staffing needs, as set forth in § 226.16(b)(1); and

(*3*) If a sponsoring organization, has Program policies and procedures in writing that assign Program responsibilities and duties, and ensure compliance with civil rights requirements; and

(C) *Performance Standard 3—Program accountability.* The renewing institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program operates in accordance with the requirements of this part. To demonstrate Program accountability, the renewing institution must document that it meets the following criteria:

(*1*) *Board of directors.* Has adequate oversight of the Program by its governing board of directors;

(*2*) *Fiscal accountability.* Has a financial system with management controls specified in writing. For sponsoring organizations, these written operational policies must assure:

(*i*) Fiscal integrity and accountability for all funds and property received, held, and disbursed;

(*ii*) The integrity and accountability of all expenses incurred;

(*iii*) That claims are processed accurately, and in a timely manner;

(*iv*) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(*v*) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(*3*) *Recordkeeping.* Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations;

(*4*) *Sponsoring organization operations.* A renewing sponsoring organization must document in its management plan that it will:

(*i*) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with § 226.15(e)(12) and (e)(14) and § 226.16(d)(2) and (d)(3);

(*ii*) Perform monitoring in accordance with § 226.16(d)(4), to ensure that sponsored facilities accountably and appropriately operate the Program;

(*iii*) If a sponsor of family day care homes, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(*iv*) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth at §§ 226.12(a) and 226.16(b)(1); and

(*5*) *Meal service and other operational requirements.* All independent centers and facilities must follow practices that result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities:

(*i*) Provide meals that meet the meal patterns set forth in § 226.20;

(*ii*) Comply with licensure or approval requirements set forth in paragraph (d) of this section;

(*iii*) Have a food service that complies with applicable State and local health and sanitation requirements;

(*iv*) Comply with civil rights requirements;

(*v*) Maintain complete and appropriate records on file; and

(*vi*) Claim reimbursement only for eligible meals.

(3) *State agency notification requirements.* Any new or renewing institution applying for participation in the Program must be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions that have submitted an incomplete application. Any disapproved applicant institution or family day care home must be notified of the reasons for its disapproval and its right to appeal under paragraph (k) or (l), respectively, of this section.

(4) *Program agreements.* (i) The State agency must require each institution that has been approved for participation in the Program to enter into an agreement governing the rights and responsibilities of each party. The State agency may allow a renewing institution to amend its existing Program agreement in lieu of executing a new agreement. The existence of a valid agreement, however, does not eliminate the need for an institution to comply with the reapplication and related provisions at paragraphs (b) and (f) of this section.

(ii) State agencies may elect to enter into permanent agreements with institutions. However, if they elect not to enter into permanent agreements with institutions, the length of time during which such agreements are in effect must be no less than one and no more than three years, except that:

(A) The State agency and an institution that is a school food authority must enter into a single permanent agreement for all child nutrition programs administered by the school food authority and the State agency;

(B) If a State agency denies the application of a renewing institution, it must temporarily extend its agreement with that institution in accordance with paragraph (c)(2)(iii)(D) of this section;

(C) If the State agency determines that unusual circumstances warrant reapplication in less than 12 months, the State agency may approve the agreement with the institution for a period of less than one year.

(iii) Any agreement that extends from one fiscal year into the following fiscal year must stipulate that, in subsequent years, the agreement is in effect contingent upon the availability of Program funds. However, this does not limit the State agency's ability to terminate the agreement in accordance with paragraph (c) of this section.

(iv) The Program agreement must provide that the institution accepts final financial and administrative responsibility for management of a proper, efficient, and effective food service, and will comply with all requirements under this part. In addition, the agreement must state that the sponsor must comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (parts 15, 15a and 15b of this title), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person may, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

(v) The Program agreement must also notify the institution of the right of the State agency, the Department, and other State or Federal officials to make announced or unannounced reviews of their operations during the institution's normal hours of child or adult care operations, and that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities.

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(f) *Miscellaneous responsibilities.* State agencies must require institutions to comply with the applicable provisions of this part and must provide or collect the information specified in this paragraph (f).

(1) *Annual responsibilities.* In addition to its other responsibilities under this part, each State agency must annually:

(i) Inform institutions that are pricing programs of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price;

(ii) Provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program;

(iii) Coordinate with the State agency that administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list to sponsoring organizations of day care homes by February 15 of each year, unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October, in which case the State agency must provide the list to such sponsoring organizations

within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. The State agency must also provide each sponsoring organization of day care homes with census data, as provided to the State agency by FNS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced-price meals. In addition, the State agency must ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school or census data. Determinations of a day care home's eligibility as a tier I day care home must be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a day care home is no longer in a qualified area. The State agency must not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data;

(iv) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement;

(v) Require centers to submit current eligibility information on enrolled participants, in order to calculate a blended rate or claiming percentage in accordance with § 226.9(b);

(vi) Require each sponsoring organization to submit an administrative budget with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. In addition, the administrative budget submitted by a sponsor of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver in accordance with § 226.7(g);

(vii) Require each institution to issue a media release, unless the State agency has issued a Statewide media release on behalf of all its institutions;

(viii) Require each independent center to provide information concerning its licensing/approval status, and require each sponsoring organization to provide information concerning the licensing/approval status of its facilities, unless the State agency has other means of confirming the licensing/approval status of any independent center or facility providing care;

(ix) Require each sponsoring organization to submit verification that all facilities under its sponsorship have adhered to the training requirements set forth in Program regulations; and

(x) Require each sponsoring organization of family day care homes to submit to the State agency a list of family day care home providers receiving tier I benefits on the basis of their participation in the Food Stamp Program. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the Food Stamp Program.

(2) *Triennial responsibilities.* In addition to its other responsibilities under this part, each State agency must, at intervals not to exceed 36 months:

(i) Require participating institutions to re-apply to continue their participation; and

(ii) Require sponsoring organizations to submit a management plan with the elements set forth in paragraph (b)(1)(iv) of this section.

(3) *Other responsibilities.* At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(i) Require independent centers to submit a budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the independent center's qualifications to manage Program funds. Such budget must demonstrate that the independent center will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), parts 3015, 3016 and 3019 of this title and applicable Office of Management and Budget circulars;

(ii) Request institutions to report their commodity preference;

(iii) Require a private nonprofit institution to submit evidence of tax exempt status in accordance with § 226.15(a);

(iv) Require proprietary title XX child care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants or 25 percent of the licensed capacity, whichever is less, in each such center during the most recent calendar month were title XX beneficiaries;

(v) Require proprietary title XIX or title XX adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(vi) Request each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(vii) Perform verification in accordance with § 226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

(g) *Program expansion.* Each State agency must take action to expand the availability of benefits under this Program, and must conduct outreach to potential sponsoring organizations of family day care homes that might administer the Program in low-income or rural areas.

(h) * * * The State agency must require new institutions to state their preference to receive commodities or cash-in-lieu of commodities when they apply, and may periodically inquire as to participating institutions' preference to receive commodities or cash-in-lieu of commodities. State agencies must annually provide institutions with information on foods available in plentiful supply, based on information provided by the Department. * * *

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(j) *Procurement provisions.* State agencies must require institutions to

adhere to the procurement provisions set forth in § 226.22 and must determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of § 226.22.

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(m) *Program assistance.* (1) *General.* The State agency must provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (parts 15, 15a, and 15b of this title). The State agency must maintain documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts.

(2) *Review priorities.* In choosing institutions for review, in accordance with paragraph (m)(6) of this section, the State agency must target for more frequent review institutions whose prior review included a finding of serious deficiency.

(3) *Review content.* As part of its conduct of reviews, the State agency must assess each institution's compliance with the requirements of this part pertaining to:

(i) Recordkeeping;

(ii) Meal counts;

(iii) Administrative costs;

(iv) Any applicable instructions and handbooks issued by FNS and the Department to clarify or explain this part, and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part;

(v) Facility licensing and approval;

(vi) Compliance with the requirements for annual updating of enrollment forms;

(vii) If an independent center, observation of a meal service;

(viii) If a sponsoring organization, training and monitoring of facilities;

(ix) If a sponsoring organization of day care homes, implementation of the serious deficiency and termination procedures for day care homes and, if such procedures have been delegated to sponsoring organizations in accordance with paragraph (l)(1) of this section, the administrative review procedures for day care homes;

(x) If a sponsoring organization, implementation of the household contact system established by the State agency pursuant to paragraph (m)(5) of this section;

(xi) If a sponsoring organization of day care homes, the requirements for classification of tier I and tier II day care homes; and

(xii) All other Program requirements.

(4) *Review of sponsored facilities.* As part of each required review of a sponsoring organization, the State agency must select a sample of facilities, in accordance with paragraph (m)(6) of this section. As part of such reviews, the State agency must conduct verification of Program applications in accordance with § 226.23(h) and must compare available enrollment and attendance records and the sponsoring organization's review results for that facility to meal counts submitted by those facilities for five days.

(5) *Household contacts.* As part of their monitoring of institutions, State agencies must establish systems for making household contacts to verify the enrollment and attendance of participating children. Such systems must specify the circumstances under which household contacts will be made, as well as the procedures for conducting household contacts. In addition, State agencies must establish a system for sponsoring organizations to use in making household contacts as part of their review and oversight of participating facilities. Such systems must specify the circumstances under which household contacts will be made, as well as the procedures for conducting household contacts. State agencies must submit to FNSROs, no later than April 1, 2005, the policies and procedures they have developed governing household contacts conducted by both the State agency, as part of institution and facility reviews conducted in accordance with this paragraph (m), and by sponsoring organizations as part of the facility review process described in § 226.16(d)(5).

(6) *Frequency and number of required institution reviews.* The State agency must annually review at least 33.3 percent of all institutions. At least 15 percent of the total number of facility reviews required must be unannounced. The State agency must review institutions according to the following schedule:

(i) Independent centers and sponsoring organizations of 1 to 100 facilities must be reviewed at least once every three years. A review of such a sponsoring organization must include reviews of 10 percent of the sponsoring organization's facilities;

(ii) Sponsoring organizations with more than 100 facilities must be reviewed at least once every two years. These reviews must include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000; and

(iii) New institutions that are sponsoring organizations of five or more facilities must be reviewed within the first 90 days of Program operations.

* * * * *

(o) * * * If violations are not corrected within the specified timeframe for corrective action, the State agency must issue a notice of serious deficiency in accordance with paragraph (c) of this section or § 226.16(l), as appropriate. However, if the health or safety of the children is imminently threatened, the State agency or sponsoring organization must follow the procedures set forth at paragraph (c)(5)(i) of this section, or § 226.16(l)(4), as appropriate. * * *

* * * * *

(r) *WIC program information.* State agencies must provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC income eligibility guidelines, to participating institutions. In addition, the State agency must ensure that:

(1) Participating family day care homes and sponsored child care centers receive this information, and periodic updates of this information, from their sponsoring organizations or the State agency; and

(2) The parents of enrolled children also receive this information.

■ 6. In § 226.7:

■ a. Paragraph (g) is revised.

■ b. Paragraph (k) is amended by adding a new sentence after the first sentence.

The revision and addition specified above read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(g) *Budget approval.* The State agency must review institution budgets and must limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget. The budget must demonstrate the institution's ability to manage Program funds in accordance with this part, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. Sponsoring organizations must submit an administrative budget to the State agency annually, and independent centers must submit budgets as

frequently as required by the State agency. Budget levels may be adjusted to reflect changes in Program activities. For sponsoring organizations of centers, the State agency is prohibited from approving the sponsoring organization's administrative budget, or any amendments to the budget, if the administrative budget shows the Program will be charged for administrative costs in excess of 15 percent of the meal reimbursements estimated to be earned during the budget year. However, the State agency may waive this limit if the sponsoring organization provides justification that it requires Program funds in excess of 15 percent to pay its administrative costs and if the State agency is convinced that the institution will have adequate funding to provide meals meeting the requirements of § 226.20. The State agency must document all waiver approvals and denials in writing, and must provide a copy of all such letters to the appropriate FNSRO.

* * * * *

(k) * * * Such procedures must include State agency edit checks, including but not limited to ensuring that payments are made only for approved meal types and that the number of meals for which reimbursement is provided does not exceed the product of the total enrollment times operating days times approved meal types. * * *

* * * * *

■ 7. In § 226.8:

■ a. Paragraphs (a) and (b) are revised.

■ b. Paragraph (c) is amended by adding the words ''or agreed-upon procedures engagements' after the words ''administrative reviews'' in the second sentence.

The revisions specified above read as follows:

§ 226.8 Audits.

(a) Unless otherwise exempt, audits at the State and institution levels must be conducted in accordance with Office of Management and Budget circular A–133 and the Department's implementing regulations at part 3052 of this title. State agencies must establish audit policy for title XIX and title XX proprietary institutions. However, the audit policy established by the State agency must not conflict with the authority of the State agency or the Department to perform, or cause to be performed, audits, reviews, agreed-upon procedures engagements, or other monitoring activities.

(b) The funds provided to the State agency under § 226.4(h) may be made available to institutions to fund a portion of organization-wide audits made in accordance with part 3052 of this title. The funds provided to an institution for an organization-wide audit must be determined in accordance with § 3052.230(a) of this title.

* * * * *

■ 8. In § 226.10:

■ a. The first sentence of paragraph (a) is revised.

■ b. Paragraph (c) is amended by adding two new sentences at the end of the introductory text and by adding new paragraphs (c)(1), (c)(2), and (c)(3).

■ c. Paragraph (f) is revised.

The addition and revisions specified above read as follows:

§ 226.10 Program payment procedures.

(a) If a State agency elects to issue advance payments to all or some of the participating institutions in the State, it must provide such advances no later than the first day of each month to those eligible institutions electing to receive advances in accordance with § 226.6 (f)(3)(vi). * * *

* * * * *

(c) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must perform edit checks on each facility's meal claim. At a minimum, the sponsoring organization's edit checks must:

(1) Verify that each facility has been approved to serve the types of meals claimed;

(2) Compare the number of children enrolled for care at each facility, multiplied by the number of days on which the facility is approved to serve meals, to the total number of meals claimed by the facility for that month. Discrepancies between the facility's meal claim and its enrollment must be subjected to more thorough review to determine if the claim is accurate; and

(3) Detect block claiming (as defined in § 226.2) by any facility. If block claiming is detected, the sponsoring organization must not include that facility among those facilities receiving less than three reviews during the current year, in accordance with § 226.16(d)(4), and must ensure that any facility submitting a block claim receives an unannounced review within 60 days of the discovery of the block claim. If, in the course of conducting this review, the sponsoring organization determines that there is a logical explanation for the facility to regularly submit a block claim, the sponsoring organization must note this in the facility's review file and is not required to conduct an unannounced visit after other block claims detected during the current year. In addition, if a State agency determines that the conduct of all required unannounced reviews within 60 days will impose unwarranted burdens on a particular sponsoring organization, the State agency may provide that sponsoring organization with up to 30 additional days to complete the required unannounced reviews.

* * * * *

(f) If, based on the results of audits, investigations, or other reviews, a State agency has reason to believe that an institution, child or adult care facility, or food service management company has engaged in unlawful acts with respect to Program operations, the evidence found in audits, investigations, or other reviews is a basis for non-payment of claims for reimbursement.

■ 9. In § 226.11:

■ a. The section heading is revised.

■ b. Paragraph (a) is amended by removing the second sentence and adding two new sentences in its place.

■ c. Paragraph (b) is amended by adding a new sentence to the end of the paragraph.

■ d. Paragraph (c)(1) is revised.

The additions and revision specified above read as follows:

§ 226.11 Program payments for centers.

(a) * * * A State agency may develop a policy under which centers are reimbursed for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed, or the State agency may develop a policy under which centers earn reimbursement only for meals served in approved centers on or after the effective date of the Program agreement. If the State agency's policy permits centers to earn reimbursement for meals served prior to the execution of a Program agreement, Program reimbursement must not be received by the center until the agreement is executed.

(b) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must conduct reasonable edit checks on the sponsored centers' meal claims which, at a minimum, include those edit checks specified at § 226.10(c).

(c) * * *

(1) Base reimbursement to child care centers and adult day care centers on actual time of service meal counts, and multiply the number of meals, by type, served to participants eligible to receive free meals, served to participants eligible to receive reduced-price meals, and served to participants from families

not meeting such standards by the applicable national average payment rate; or

* * * * *

■ 10. In § 226.13:

■ a. Paragraph (b) is amended by adding a new sentence to the end of the paragraph; and

■ b. Paragraph (c) is amended by adding the words ''based on daily meal counts taken in the home'' after the words ''as applicable,''.

The addition specified above reads as follows:

§ 226.13 Food service payments to sponsoring organizations for day care homes.

* * * * *

(b) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must conduct reasonable edit checks on the day care homes' meal claims which, at a minimum, include those edit checks specified at § 226.10(c).

* * * * *

§ 226.14 [Amended]

■ 11. In § 226.14(a), the reference ''§ 226.6(f)(3)'' is removed and the reference § 226.7(g)'' is added in its place.

■ 12. In § 226.15:

■ a. Paragraph (b) is revised.

■ b. Paragraph (e)(2) is revised.

■ c. Paragraph (e)(3) is amended by adding a new sentence to the end of the paragraph.

■ d. Paragraph (e)(4) is revised.

■ e. Paragraph (e)(5) is removed and paragraphs (e)(6) through (e)(14) are redesignated as paragraphs (e)(5) through (e)(13), respectively.

■ f. New paragraph (e)(14) is added.

■ g. Paragraphs (g) through (k) are redesignated as paragraphs (h) through (l), and a new paragraph (g) is added.

■ h. Newly redesignated paragraph (i) is amended by removing the reference ''§ 226.6(f)(1)'' and adding in its place the reference ''§ 226.6(b)(4)''.

■ i. New paragraphs (m) and (n) are added.

The additions and revisions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) *New applications and renewals*. Each institution must submit to the State agency with its application all information required for its approval as set forth in § 226.6(b) and 226.6(f). Such information must demonstrate that a new institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6(b)(1)(xvii), and that a renewing institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6(b)(2)(vii).

* * * * *

(e) * * *

(2) Documentation of the enrollment of each participant at child care centers (except for outside-school-hours care centers) and adult day care centers. All types of centers must maintain information used to determine eligibility for free or reduced-price meals in accordance with § 226.23(e)(1). For child care centers, such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(3) * * * Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(4) Daily records indicating the number of participants in attendance and the daily meal counts, by type (breakfast, lunch, supper, and snacks), served to family day care home participants, or the time of service meal counts, by type (breakfast, lunch, supper, and snacks), served to center participants. State agencies may require family day care homes to record meal counts at the time of meal service only in day care homes providing care for more than 12 children in a single day, or in day care homes that have been found seriously deficient due to problems with their meal counts and claims.

* * * * *

(14) For sponsoring organizations, records documenting the attendance at training of each staff member with monitoring responsibilities. Training must include instruction, appropriate to the level of staff experience and duties, on the Program's meal patterns, meal counts, claims submission and claim review procedures, recordkeeping requirements, and an explanation of the Program's reimbursement system.

* * * * *

(g) *Payment to employees*. No institution that is a sponsoring organization of family day care homes and that employs more than one person is permitted to base payment (including bonuses or gratuities) to its employees, contractors, or family day care home providers solely on the number of new family day care homes recruited for the sponsoring organization's Program.

* * * * *

(m) *Regulations and guidance*. Each institution must comply with all regulations issued by FNS and the Department, all instructions and handbooks issued by FNS and the Department to clarify or explain existing regulations, and all regulations, instructions and handbooks issued by the State agency that are consistent with the provisions established in Program regulations.

(n) *Information on WIC*. Each institution must ensure that parents of enrolled children are provided with current information on the benefits and importance of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the eligibility requirements for WIC participation.

■ 13. In § 226.16:

■ a. The introductory text to paragraph (b) and paragraph (b)(1) are revised.

■ b. Paragraphs (d)(2), (d)(3) and (d)(4) are revised.

■ c. New paragraph (d)(5) is added.

■ d. Paragraph (l)(2)(vii) is amended by removing the word ''or'' after the semicolon.

■ e. Paragraph (l)(2)(viii) is redesignated as (l)(2)(ix) and a new paragraph (l)(2)(viii) is added in its place.

■ f. New paragraph (m) is added.

The additions and revisions specified above read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(b) Each sponsoring organization must submit to the State agency with its application all information required for its approval, and the approval of the facilities under its jurisdiction, as set forth in §§ 226.6(b) and 226.6(f). The application must demonstrate that the institution has the administrative and financial capability to operate the Program in accordance with the Program regulations. In addition to the information required in §§ 226.6(b) and 226.6(f), the application must include:

(1) A sponsoring organization management plan and administrative budget, in accordance with §§ 226.6(b)(1)(iv), 226.6(b)(1)(v), 226.6(b)(2)(i), 226.6(f)(2)(ii), and 226.7(g), which includes information sufficient to document the sponsoring organization's compliance with the performance standards set forth at § 226.6(b)(1)(xvii) and 226.6(b)(2)(vii). As part of its management plan, a sponsoring organization of day care homes must document that, to perform monitoring, it will employ the equivalent of one full-time staff person

for each 50 to 150 day care homes it sponsors. As part of its management plan, a sponsoring organization of centers must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 25 to 150 centers it sponsors. It is the State agency's responsibility to determine the appropriate level of staffing for monitoring for each sponsoring organization, consistent with these specified ranges and factors that the State agency will use to determine the appropriate level of monitoring staff for each sponsor. The monitoring staff equivalent may include the employee's time spent on scheduling, travel time, review time, follow-up activity, report writing, and activities related to the annual updating of children's enrollment forms. Sponsoring organizations that were participating in the Program on July 29, 2002, were to have submitted, no later than July 29, 2003, a management plan or plan amendment that meets the monitoring staffing requirement. For sponsoring organizations of centers, the portion of the administrative costs to be charged to the Program may not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver in accordance with § 226.7(g). A sponsoring organization of centers must include in the administrative budget all administrative costs, whether incurred by the sponsoring organization or its sponsored centers. If at any point a sponsoring organization determines that the meal reimbursements estimated to be earned during the budget year will be lower than that estimated in its administrative budget, the sponsoring organization must amend its administrative budget to stay within the 15 percent limitation (or any higher limit established pursuant to a waiver granted under § 226.7(g)) or seek a waiver. Failure to do so will result in appropriate fiscal action in accordance with § 226.14(a).

* * * * *

(d) * * *

(2) Training on Program duties and responsibilities to key staff from all sponsored facilities prior to the beginning of Program operations. At a minimum, such training must include instruction, appropriate to the level of staff experience and duties, on the Program's meal patterns, meal counts, claims submission and review procedures, recordkeeping requirements, and reimbursement system. Attendance by key staff, as defined by the State agency, is mandatory;

(3) Additional mandatory training sessions for key staff from all sponsored child care and adult day care facilities not less frequently than annually. At a minimum, such training must include instruction, appropriate to the level of staff experience and duties, on the Program's meal patterns, meal counts, claims submission and review procedures, recordkeeping requirements, and reimbursement system. Attendance by key staff, as defined by the State agency, is mandatory;

(4)(i) *Review elements.* Reviews that assess whether the facility has corrected problems noted on the previous review(s), a reconciliation of the facility's meal counts with enrollment and attendance records for a five-day period, as specified in paragraph (d)(4)(ii) of this section, and an assessment of the facility's compliance with the Program requirements pertaining to:

(A) The meal pattern;

(B) Licensing or approval;

(C) Attendance at training;

(D) Meal counts;

(E) Menu and meal records; and

(F) The annual updating and content of enrollment forms (if the facility is required to have enrollment forms on file, as specified in § 226.15(e)(2) and 226.15(e)(3)).

(ii) *Reconciliation of meal counts.* Reviews must examine the meal counts recorded by the facility for five consecutive days during the current and/or prior claiming period. For each day examined, reviewers must use enrollment and/or attendance records to determine the number of children in care during each meal service and attempt to reconcile those numbers to the numbers of breakfasts, lunches, suppers, and/or snacks recorded in the facility's meal count for that day. Based on that comparison, reviewers must determine whether the meal counts were accurate. If there is a discrepancy between the number of children enrolled or in attendance on the day of review and prior meal counting patterns, the reviewer must attempt to reconcile the difference and determine whether the establishment of an overclaim is necessary.

(iii) *Frequency and type of required facility reviews.* Sponsoring organizations must review each facility three times each year, except as described in paragraph (d)(4)(iv) of this section. In addition:

(A) At least two of the three reviews must be unannounced;

(B) At least one unannounced review must include observation of a meal service;

(C) At least one review must be made during each new facility's first four weeks of Program operations; and

(D) Not more than six months may elapse between reviews.

(iv) *Averaging of required reviews.* If a sponsoring organization conducts two unannounced reviews of a facility in a year and finds no serious deficiencies (as described in paragraph (l)(2) of this section, regardless of the type of facility), the sponsoring organization may choose not to conduct a third review of the facility that year, provided that the sponsoring organization conducts an average of three reviews of all of its facilities that year. When the sponsoring organization uses this averaging provision, and a specific facility receives two reviews in one review year, its first review in the next review year must occur no more than nine months after the previous review. Sponsoring organizations may not review a sponsored facility fewer than three times per year if the facility has submitted a block claim during the year.

(v) *Follow-up reviews.* If, in conducting a facility review, a sponsoring organization detects one or more serious deficiency, the next review of that facility must be unannounced. Serious deficiencies are those described at paragraph (l)(2) of this section, regardless of the type of facility.

(vi) *Notification of unannounced reviews.* Sponsoring organizations of centers must provide each center with written notification of the right of the sponsoring organization, the State agency, the Department, and other State and Federal officials to make announced or unannounced reviews of its operations during the center's normal hours of operation, and must also notify sponsored centers that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities. For sponsored centers participating on July 29, 2002, the sponsoring organization was to have provided this notice no later than August 29, 2002. For sponsored centers that are approved after July 29, 2002, the sponsoring organization must provide the notice before meal service under the Program begins. Sponsoring organizations must provide day care homes notification of unannounced visits in accordance with § 226.18(b)(1).

(vii) *Other requirements pertaining to unannounced reviews.* Unannounced reviews must be made only during the facility's normal hours of operation, and monitors making such reviews must show photo identification that demonstrates that they are employees of the sponsoring organization, the State

agency, the Department, or other State and Federal agencies authorized to audit or investigate Program operations.

ii) *Imminent threat to health or safety.* Sponsoring organizations that discover in a facility conduct or conditions that pose an imminent threat to the health or safety of participating children or the public, must immediately notify the appropriate State or local licensing or health authorities and take action that is consistent with the recommendations and requirements of those authorities.

(5) For sponsoring organizations, as part of their monitoring of facilities, compliance with the household contact requirements established pursuant to § 226.6(m)(5) of this part.

* * * * *

(l) * * *

(2) * * *

(viii) Failure to participate in training; or

* * * * *

(m) Sponsoring organizations of family day care homes must not make payments to employees or contractors solely on the basis of the number of homes recruited. However, such employees or contractors may be paid or evaluated on the basis of recruitment activities accomplished.

■ 14. In § 226.17:

■ a. Paragraph (b)(3) is amended by removing the words ‘‘, except that reimbursement may be claimed for two meals and two snacks or three meals and one snack served to a child for each day in which that child is maintained in care for eight or more hours’’.

■ b. Paragraph (b)(7) is amended by adding a new sentence at the end of the paragraph.

■ c. Paragraph (b)(8) is revised. d. A new paragraph (b)(9) is added.

The additions and revision specified above read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(8) Each child care center must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled children, and to adults performing labor necessary to the food service.

(9) Each child care center must require key staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

* * * * *

■ 15. In § 226.18:

■ a. Paragraph (b)(2) is revised.

■ b. Paragraph (b)(7) is amended by removing the semicolon at the end of the paragraph and adding a period in its place, and by adding a new sentence at the end of the paragraph.

■ c. Paragraph (e) is amended by removing the first sentence and adding two new sentences in its place.

The revisions and additions specified above read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(2) The responsibility of the sponsoring organization to require key staff, as defined by the State agency, to receive Program training prior to the day care home's participation in the Program, and at least annually thereafter, on content areas established by the State agency, and the responsibility of the day care home to participate in that training;

* * * * *

(7) * * * The sponsoring organization must not withhold Program payments to any family day care home for any other reason, except that the sponsoring organization may withhold from the provider any amounts that the sponsoring organization has reason to believe are invalid, due to the provider having submitted a false or erroneous meal count;

* * * * *

(e) Each day care home must maintain on file documentation of each child's enrollment and must maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care. * * *

* * * * *

■ 16. In § 226.19:

■ a. Paragraph (b)(6) is removed and paragraphs (b)(7) through (b)(9) are redesignated as paragraphs (b)(6) through (b)(8), respectively.

■ b. Paragraphs (b)(1) and (b)(4), and newly redesignated paragraphs (b)(7)(iv) and (b)(7)(v), are amended by removing the word ‘‘enrolled’’ wherever it occurs.

■ c. Paragraph (b)(3)(i) is revised.

■ d. Paragraph (b)(5) is amended by removing the words ‘‘, except that reimbursement may be claimed for two meals and two snacks or three meals and one snack served to a child for each day in which that child is maintained in care for eight or more hours’’.

■ e. Paragraph (b)(5) is further amended by removing the words ‘‘meals served to children who are not enrolled, for’’ from the third sentence.

■ f. The introductory text of newly redesignated paragraph (b)(6) is revised.

■ g. Newly redesignated paragraph (b)(6)(i) is amended by removing the words ‘‘enrolled for care and’’ and adding in their place the words ‘‘and to’’.

■ h. Newly redesignated paragraph (b)(6)(iii) is removed and newly redesignated paragraphs (b)(6)(iv), (b)(6)(v), and (b)(6)(vi) are redesignated as paragraphs (b)(6)(iii), (b)(6)(iv), and (b)(6)(v), respectively.

■ i. Newly redesignated paragraph (b)(7)(i) is amended by removing the words ‘‘Documentation of enrollment for all children, including information’’, and adding the word ‘‘Information’’ in their place.

The revisions specified above read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(3) * * *

(i) Children participate in a regularly scheduled program that meets the criteria of paragraph (b)(1) of this section. The program is organized for the purpose of providing services to children and is distinct from any extracurricular programs organized primarily for scholastic, cultural, or athletic purposes; and

* * * * *

(6) Each outside-school-hours care center must require key operational staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service must be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this section. Operational personnel must ensure that:

* * * * *

■ 17. In § 226.19a:

■ a. Paragraph (b)(9) is revised.

■ b. A new paragraph (b)(11) is added.

The addition and revision specified above read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(b) * * *

(9) Each adult day care center must maintain daily records of time of service

meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled participants, and to adults performing labor necessary to the food service.

* * * * *

(11) Each adult day care center must require key operational staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service must be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this section.

* * * * *

■ 18. In § 226.20, paragraphs (k) through (p) are redesignated as paragraphs (l) through (q), respectively, and a new paragraph (k) is added to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(k) *Time of meal service.* State agencies may require any institution or facility to allow a specific amount of time to elapse between meal services or require that meal services not exceed a specified duration.

* * * * *

■ 19. In § 226.23:

■ a. Paragraph (a) is revised.

■ b. Paragraph (c)(2) is amended by removing the words ''members of AFDC assistance units or'' and adding in their place the words ''TANF recipients or who are members of''.

■ c. The first sentence of paragraph (d) is amended by removing the period after the words ''public release'' and adding in its place the words '', unless the State agency has issued a Statewide media release on behalf of all institutions.''

■ d. The fifth sentence of paragraph (d) is amended by removing the words ''members of AFDC assistance units'' and adding in their place the words ''TANF recipients''.

■ e. Paragraph (e)(1)(i) is amended by removing the words ''or AFDC assistance unit'' and adding in their place the words ''or is a TANF recipient''.

■ f. Paragraph (e)(1)(iv) is amended by removing the words ''AFDC assistance units'' the first time they appear, and adding in their place the words ''who are TANF recipients'', and by removing the words ''AFDC assistance units'' the second time they appear, and adding in their place the words ''children who are TANF recipients''.

■ g. Paragraph (e)(1)(iv)(B) is amended by removing the words ''AFDC benefits'' and adding in their place the words ''TANF benefits''.

■ h. Paragraph (h)(2)(i)(A) is amended by removing the words ''AFDC assistance unit'' and adding in their place the words ''is a TANF recipient''.

■ i. Paragraph (h)(2)(iii)(D) is amended by removing the word ''AFDC'' and adding in its place the word ''TANF''.

■ j. Paragraph (h)(2)(v)(C) is amended by removing the words ''food stamp/FDPIR/AFDC'' and adding in their place the words ''food stamp/FDPIR/TANF''.

■ k. Paragraph (h)(2)(vi) is amended by removing the word ''AFDC'' and adding in its place the word ''TANF''.

The revision specified above reads as follows:

§ 226.23 Free and reduced-price meals.

(a) The State agency must not enter into a Program agreement with a new institution until the institution has submitted, and the State agency has approved, a written policy statement concerning free and reduced-price meals to be used in all child and adult day care facilities under its jurisdiction, as described in paragraph (b) of this section. The State agency must not require an institution to revise its free and reduced-price policy statement or its nondiscrimination statement unless the institution makes a substantive change to either policy. Pending approval of a revision to these statements, the existing policy must remain in effect.

* * * * *

§ 226.25 [Amended]

■ 19. In § 226.25, paragraph (g) is removed.

Dated: August 20, 2004.

Eric M. Bost,

Under Secretary for Food, Nutrition, and Consumer Services.

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Part III

Securities and Exchange Commission

17 CFR Parts 210, 240, and 249

Temporary Postponement of the Final Phase-In Period for Acceleration of Periodic Report Filing Dates; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240 and 249

[Release Nos. 33–8477; 34–50254; File No. S7–32–04]

RIN 3235–AJ30

Temporary Postponement of the Final Phase-in Period for Acceleration of Periodic Report Filing Dates

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to postpone for one year the final phase-in period for acceleration of the due dates of quarterly and annual reports required to be filed under the Securities Exchange Act of 1934 by certain reporting companies known as ''accelerated filers'' that have a public float of at least $75 million, that have been subject to the Exchange Act's reporting requirements for at least 12 calendar months, that previously have filed at least one annual report, and that are not eligible to file their quarterly and annual reports on Forms 10–QSB and 10–KSB.

DATES: Comments should be received on or before October 1, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–32–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–32–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jennifer G. Williams, Attorney-Advisor, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rules 3–01,[1] 3–09[2] and 3–12[3] of Regulation S–X,[4] Forms 10–Q[5] and 10–K,[6] as well as Rules 13a–10[7] and 15d–10,[8] under the Securities Exchange Act of 1934.[9]

I. Introduction

On September 5, 2002, we adopted amendments to certain rules and forms to accelerate the filing of quarterly, annual, and transition reports under the Securities Exchange Act of 1934[10] by reporting companies that are ''accelerated filers.''[11] Exchange Act Rule 12b–2[12] defines an ''accelerated filer'' to mean an issuer after it first meets the following conditions as of the end of its fiscal year:

- The issuer has a public float of $75 million or more;
- The issuer has been subject to Exchange Act reporting requirements for at least 12 calendar months;
- The issuer has filed at least one annual report; and
- The issuer is not eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports. We also adopted changes to related rules governing the timeliness of financial information in Commission filings, such as Securities Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act.

We originally determined to phase-in the accelerated filing deadlines over a three-year period in an effort to balance the market's need for information with the time companies need to prepare that information without undue burden. In our September 2002 adopting release, we stated that a phase-in period would allow a greater transition period for companies to adjust their reporting schedules and to develop efficiencies to ensure that the quality and accuracy of reported information would not be compromised.

Year one of the phase-in period began for accelerated filers with fiscal years ending on or after December 15, 2002. During year one, the annual report deadline remained at 90 days after fiscal year end, and the quarterly report deadline remained at 45 days after the end of a quarter, but accelerated filers became subject to new disclosure requirements concerning website access to their Exchange Act reports.[13] In year two, the deadline for annual reports filed for fiscal years ending on or after December 15, 2003 was accelerated to 75 days and the deadline for the three subsequently filed quarterly reports was accelerated to 40 days. We currently are in year two of the phase-in period.

In year three, the annual report deadline was to become further accelerated to 60 days with respect to annual reports filed for fiscal years ending on or after December 15, 2004, and the deadline for the three subsequently filed quarterly reports was to change to 35 days. This would have completed the phase-in, with the 60-day and 35-day deadlines remaining in place for all subsequent periods.

II. Proposed Postponement of Phase-In Period for Accelerated Filing

We propose to postpone for one year the completion of the final phase-in of the accelerated filing deadlines to allow additional time and opportunity for accelerated filers and their auditors to focus their efforts on complying with our new requirements regarding internal control over financial reporting.[14] The proposed change would avoid subjecting accelerated filers at the same time to a further compression of filing deadlines. An accelerated filer must begin to include both a management report and auditor report on the effectiveness of its internal control over financial reporting in its annual report filed for its first fiscal year ending on or

[1] 17 CFR 210.3–01.

[2] 17 CFR 210.3–09.

[3] 17 CFR 210.3–12.

[4] 17 CFR 210.1–01*et seq.*

[5] 17 CFR 249.308a.

[6] 17 CFR 249.310.

[7] 17 CFR 240.13a–10.

[8] 17 CFR 240.15d–10.

[9] 15 U.S.C. 78a *et seq.*

[10] *Id.*

[11] Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480]. On April 8, 2003, we published technical amendments to these final rules in Release No. 33–8128A [67 FR 17880].

[12] 17 CFR 240.12b–2.

[13] *See* Item 101(e) of Regulation S–K [17 CFR 229.101(e)].

[14] *See* Release No. 33–8238 (June 5, 2003) [68 FR 36636]. *See* also Release No. 33–8392 (Feb. 24, 2004) [69 FR 9722] in which we subsequently extended the compliance dates for inclusion of management reports in an accelerated filer's annual report from June 15, 2004 to November 15, 2004. The compliance date for non-accelerated filers also was extended from April 15, 2005 to July 15, 2005.

after November 15, 2004.[15] The rules as currently drafted will result in most accelerated filers having to comply for the first time with the internal control reporting requirements within the same timeframe that their annual report deadlines are scheduled to change from 75 to 60 days for fiscal years ending on or after December 15, 2004.

We believe very strongly that it is critical that all Exchange Act reporting companies implement the internal control requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002 completely and carefully; these requirements are central to the Act's objectives of improving the accuracy and reliability of financial reporting. We and members of the staff therefore view the successful implementation of the internal control requirements as a Commission priority and have exhorted companies to conduct high-quality, thorough assessments of their internal control over financial reporting.[16] The PCAOB has similarly adopted its Audit Standard No. 2 to provide for an audit of internal control and management's assessment.[17] We believe that it is also critical that financial management, external auditors and audit committees are appropriately and carefully consulted regarding the audit.

In recent months, several companies and auditors have expressed concern over their ability to perform the work necessary to comply with the new internal control requirements at the same time that the periodic report deadlines are being further accelerated.[18] We think that the proposed postponement for one year would address concerns that the final step in acceleration of the periodic report deadlines may impede some accelerated filers' initial efforts to implement the internal control requirements with the care and attention we believe is desirable.

Moreover, we believe that a temporary postponement of the filing deadlines would benefit investors by affording accelerated filers additional time to resolve difficult analytical issues that may arise in determining whether a problem discovered in the course of management's internal control assessment constitutes a significant deficiency or material weakness.[19] Similarly, the proposed postponement should provide greater opportunity for an accelerated filer's management, financial reporting staff and audit committee members to coordinate with the filer's independent auditor regarding its internal control audit.[20]

We propose to postpone the accelerated filing phase-in period by one year so that the deadline for annual reports filed for fiscal years ending on or after December 15, 2004 would remain at 75 days after fiscal year end. Similarly, the quarterly report deadline for the three subsequently filed quarterly reports would remain at 40 days after quarter end. The current year two deadlines therefore would remain in place for one additional year. For a company that meets the definition of an accelerated filer under Exchange Act Rule 12b–2 [21] as of the end of its fiscal year ending on or after December 15, 2004, the annual report deadline would be 75 days after fiscal year end. Under the proposed amendments, the phase-in period would resume in year four, during which an accelerated filer would have to file its annual report within 60 days after its fiscal year ending on or after December 15, 2005. The company would then have to file its next three quarterly reports within 35 days after quarter end. At the end of year four, the accelerated filing phase-in period would be complete, with the 60-day and 35-day deadlines remaining in place for accelerated filers for all subsequent periods.

We also propose to make conforming amendments to Regulation S–X to apply the postponed phase-in period to the financial information updating requirements in other Commission filings, such as Securities Act and Exchange Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act, as these updating requirements also are tied to periodic report due dates under the Exchange Act.[22] Updated interim financial information would continue to be required within 130 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2004 and before December 15, 2005. The proposal would postpone the final phase-in period to year four during which updated interim financial information would be required within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2005.

We are not suggesting in any way that the proposed one year postponement should cause companies and auditors to slow their efforts to comply with the new internal control requirements or to relax their implementation efforts. Rather, we expect that accelerated filers already are committing substantial resources to comply with our internal control requirements. We believe that concerns have been raised by a sufficient number of companies and auditors to warrant the proposed one-year postponement. However, we remain committed to the concept of filing on a more timely basis by accelerated filers and therefore to the completion of the final phase-in period after the proposed one year postponement.

Request for Comment

- Is it appropriate to postpone the final phase-in period of the accelerated filing deadlines? If so, is the length of the proposed postponement appropriate, or should it be shorter or longer?
- Would a postponed phase-in period benefit investors by helping to ensure the quality and accuracy of the information included by companies in their periodic reports? Would it

[15] Item 308 of Regulations S–B and S–K [17 CFR 228.308 and 229.308].

[16] *See e.g.*, William H. Donaldson, Testimony Concerning Implementation of the Sarbanes-Oxley Act of 2002 (September 9, 2003); Scott A. Taub, The SEC's Internal Control Report Rules and Thoughts on the Sarbanes-Oxley Act (May 29, 2003).

[17] *See* Release No. 34–49884; File No. PCAOB 2004–03 (Jun. 17, 2004) [69 FR 35083].

[18] *See, e.g.*, Letter from James H. Quigley, Chief Executive Officer of Deloitte & Touche USA to Donald Nicolaisen, Chief Accountant for the Commission (Jul. 28, 2004); Letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission (Aug. 3, 2004). These letters are included in Comment Letter File No. S7–32–04.

[19] *See* Letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission, supra note 18 (''The premise underlying our view that a delay is necessary and appropriate *for one year only* relates to the potential unintended consequences that two regulatory requirements could have on the quality of financial reporting: the timeline for filing the Form 10–K is accelerating while many registrants and auditors are finding that the processes surrounding readiness for reporting under Section 404 have been underestimated. Completion of that process by many registrants likely will be either hurried or postponed, a potential outcome that will not serve investors well.'')

[20] *See* Letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission, supra note 18 (''The impact on the capital markets and the marketplace implications of disclosure of material weaknesses under the Section 404 framework is unknown, and additional due care and prudence by registrants in making such judgments about the quality of internal control is critical. This will involve discussions with senior management, the audit committee, legal counsel and auditors on the potentially controversial and judgmental issues. We expect that the most difficult decisions, where there is legitimate room for judgment, will include discussions among a number of constituents to gather views. This process will be very time consuming, but will be time well spent to get to the right answer.'')

[21] *See* Rule 12b–2(1) of the Exchange Act [17 CFR 240.12b–2(1)].

[22] 15 U.S.C. 78n.

disadvantage investors in any significant respect?

• Should we postpone the final phase-in of the accelerated filing deadlines for both annual and quarterly reports or only for annual reports given that management's internal control report must appear only in the annual report? Does the required disclosure about material changes to a company's internal control over financial reporting that must appear in the quarterly report warrant a postponement of the accelerated filing deadlines for quarterly reports?

• Should we provide for an extension of the filing deadlines only for accelerated filers that request an extension, for example, by providing for an extension upon the filing of a Form 12b–25 under the Exchange Act? Should we only provide an extension of the filing deadlines only to certain companies such as those that demonstrate a need for the extension? If so, what would be the best method for companies to communicate their request for an extension?

III. General Request for Comment

We request and encourage any interested person to submit comments on the proposal and any other matters that might have an impact on the proposal. We request comment from the point of view of companies, auditors and investors, as well as other users of Exchange Act information. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

The proposed postponement affects existing ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[23] The titles for the affected collections of information are ''Form 10–K'' and ''Form 10–Q.'' Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Both forms were adopted pursuant to Sections 13 and 15(d) of the Exchange Act. 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 proposal, if adopted, would postpone the final phase-in of compliance dates to accelerate the deadlines of quarterly reports on Form 10–Q and annual reports on Form 10–K filed by companies that are ''accelerated filers,'' as defined in Exchange Act Rule 12b–2.[24] We believe that the proposed one year postponement in further acceleration of the Form 10–K and 10–Q filing deadlines would allow companies and their auditors to focus their time and resources on preparing high-quality, thorough evaluations of the effectiveness of internal control over financial reporting. Accelerated filers will be required for the first time to include a management report based on these internal control evaluations in their Form 10–K reports filed for fiscal years ending on or after November 15, 2004.[25] This compliance date nearly coincides with the currently scheduled date for further acceleration of the Form 10–K filing deadline.[26] Accelerated filers also would have to file their quarterly reports under further compressed deadlines.[27]

Our proposal to postpone the final compliance dates would not change the information required to be included in accelerated filers' annual and quarterly reports; it only affects the forms' due dates. Companies would have a longer period to adjust their systems to prepare for a further acceleration of the reporting deadlines, which may slightly ease the overall burden for some companies. We do not believe that the Form 10–K and 10–Q information collection burdens would not be affected by this proposal in any quantifiable manner.

V. Cost-Benefit Analysis

The proposal, if adopted, would postpone the phase-in period for acceleration of the filing deadlines of quarterly and annual reports filed by ''accelerated filers,'' as defined in Exchange Act Rule 12b–2. Specifically, the annual report deadline would remain at 75 days and the quarterly report deadline would remain at 40 days for annual reports filed for fiscal years ending on or after December 15, 2004, and the three subsequently filed quarterly reports. Under the proposal, the accelerated filing phase-in period would resume for reports filed for fiscal years ending on or after December 15, 2005, during which an accelerated filer would have to file its annual report within 60 days after year end and file its next three quarterly reports within 35 days. These filing deadlines would then remain in place for all annual and quarterly reports filed thereafter. In this section, we examine the benefits and costs of our proposal. We request that commenters provide views along with supporting data as to the benefits and costs associated with the proposal.

A. Benefits

The proposal would afford an accelerated filer's management additional time after the end of the fiscal period ending on or after December 15, 2004 to carefully analyze management's evaluation of the effectiveness of the company's internal control over financial reporting and to prepare a report assessing such effectiveness. The proposal also would allow the accelerated filer's independent auditor additional time to prepare its report on the effectiveness of the filer's internal control over financial reporting in sufficient time for inclusion in the company's annual report. We expect that investors also would benefit if we allow accelerated filers and their auditors additional time to prepare meaningful disclosure about their internal control reviews.

In addition, the proposal may reduce the costs incurred by accelerated filers to comply with the new internal control requirements. As an accelerated filer must include both a management report and auditor report on the effectiveness of its internal control over financial reporting for the first time in its annual report for the fiscal year ending on or after November 15, 2004, it likely will face the highest compliance burden in that year. The proposed postponement of the accelerated filing phase-in period may help to ameliorate some of the burden associated with implementing the internal control requirements by allowing companies 15 additional days to file their annual reports. These benefits are difficult to quantify.

B. Costs

If we adopt the proposed one-year postponement of the phase-in period for accelerated deadlines, investors will not have access to the information included in accelerated filers' quarterly and annual reports as quickly as they would have if we adhered to the original phase-in schedule. However, the potential delay of information would be temporary and limited to 15 days with

[23] 44 U.S.C. 3501 *et seq.*

[24] 17 CFR 240.12b–2.

[25] 17 CFR 228.308 and 229.308.

[26] The Form 10–K deadline is scheduled to change from 75 to 60 days for fiscal years ending on or after December 15, 2004.

[27] The Form 10–Q deadline is scheduled to move from 40 to 35 days after the end of a quarter.

respect to annual reports and five days with respect to quarterly reports.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[28] a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposal on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act[29] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act[30] and Section 3(f) of the Exchange Act[31] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposal would minimize the cost and disruption of implementing the accelerated final phase-in period at the same time companies and their external auditors must comply with our new internal control over financial reporting requirements. The proposed postponement would provide additional time for affected companies and their auditors to conduct high-quality and thorough assessments and audits of the effectiveness of the companies' internal control over financial reporting. This, in turn, would increase the reliability and integrity of the company's financial reporting to investors. Enhanced investor confidence leads to increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation.

The proposal could have certain negative effects. The proposed postponement of compliance dates would delay the timeliness and accessibility of Exchange Act reports to investors and the financial markets. The delay of information to investors may hinder an investor's ability to make informed decisions, and as a result, may impede market efficiency and delay capital formation. However, the delay would be limited to 15 days with respect to annual reports and five days with respect to quarterly reports; these negative effects would be temporary and would be eliminated once the final phase-in period is completed next year. Furthermore, we believe that the proposal would not have any additional competitive effect between accelerated and non-accelerated filers other than the incremental costs imposed by accelerated deadlines.

We request comment on whether the proposal, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Regulatory Flexibility Analysis Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposal contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would postpone the compliance deadlines for certain amendments to our rules and forms that accelerate the filing of quarterly and annual reports required under the Exchange Act by reporting companies that meet the definition of an ''accelerated filer'' as defined in Exchange Act Rule 12b–2. Exchange Act Rule 0–10(a)[32] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. Because the impact would be to simply delay for one year the obligation of a small percentage of small businesses to comply with further accelerated filing deadlines for their periodic reports, we do not believe that the proposal, if adopted, would have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We specifically request comment on whether the proposal could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this document are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 13, 15(d) and 23(a) of the Exchange Act.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 210, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7207 and 7262, unless otherwise noted.

2. Section 210.3–01 is amended by revising paragraphs (e)(1)(ii) and (iii), (i)(1)(i)(B) and (C), (i)(2)(i)(B) and (C) and (i)(2)(ii) to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(e) * * *

(1) * * *

(ii) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(iii) 125 days for fiscal years ending on or after December 15, 2005; and

* * * * *

(i)(1) * * *

(i) * * *

[28] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[29] 15 U.S.C. 78w(a)(2).

[30] 15 U.S.C. 77b(b).

[31] 15 U.S.C. 78c(f).

[32] 17 CFR 240.0–10(a).

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(2) * * *

(i) * * *

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2005; and

* * * * *

3. Section 210.3–09 is amended by revising paragraph (b)(3)(i)(B) and (C) and (b)(4)(i)(B) and (C) to read as follows:

§ 210.3–09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(4) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

* * * * *

4. Section 210.3–12 is amended by revising paragraph (g)(1)(i)(B) and (C) and (g)(2)(i)(B) and (C) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(g)(1) * * *

(i) * * *

(B) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 125 days for fiscal years ending on or after December 15, 2005; and

(2) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11 and 7201 *et. seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Section 240.13a–10 is amended by revising paragraph (j)(1)(i)(B) and (C) and (j)(2)(i)(B) and (C) to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(j)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005;

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(2) * * *

(i) * * *

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(C) 35 days for fiscal years ending on or after December 15, 2006; and

* * * * *

7. Section 240.15d–10 is amended by revising paragraph (j)(1)(i)(B) and (C) and (j)(2)(i)(B) and (C) to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(j)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005;

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(2) * * *

(i) * * *

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(C) 35 days for fiscal years ending on or after December 15, 2006; and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

9. Section 249.308a is amended by revising paragraph (a)(1)(ii) and (iii) to read as follows:

§ 249.308a Form 10–Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) * * *

(1) * * *

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2006; and

* * * * *

10. Form 10–Q (referenced in § 249.308a) is amended by revising paragraph a.(ii) and (iii) of General Instruction A.1. to read as follows:

Note: The text of Form 10-Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

General Instructions

A. Rule as to Use of Form 10–Q

1. * * *

a. * * *

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2006; and

* * * * *

11. Section 249.310 is amended by revising paragraph (b)(1)(ii) and (iii) to read as follows:

§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

(b) * * *

(1) * * *

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2005;

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2005; and

* * * * *

12. Form 10–K (referenced in § 249.310) is amended by revising paragraph (2)(a)(ii) and (iii) of General Instruction A, to read as follows:

Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

A. Rule as To Use of Form 10–K

(2) * * *

(a) * * *

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2005; and

* * * * *

Dated: August 25, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–19785 Filed 8–31–04; 8:45 am]

BILLING CODE 8010–01–P

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Wednesday,
September 1, 2004

Part IV

Department of Housing and Urban Development

24 CFR Part 236

Retention of Excess Income in the Section 236 Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 236

[Docket No. FR–4689–F–02]

RIN 2502–AH68

Retention of Excess Income in the Section 236 Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the Section 236 program of the Federal Housing Administration (FHA) to establish the terms and procedures by which owners of multifamily housing projects that receive Section 236 rental assistance may retain some or all of their excess rental income. This final rule follows publication of an August 12, 2002, proposed rule, takes into consideration the public comments received in response to the proposed rule, and makes certain changes in response to the public comments.

DATES: *Effective Date:* October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The FHA Section 236 program, authorized by Section 236 of the National Housing Act (NHA) (12 U.S.C. 1715z–1), was established to facilitate the construction and substantial rehabilitation of affordable multifamily rental housing (referred to as projects in the Section 236 program) for lower-income households. Under the Section 236 program, HUD provides a long-term interest subsidy (known as interest reduction payments) and mortgage insurance to project owners to reduce the interest rate on the owner's mortgage to help the owner maintain the rental affordability of the project. Within the last few years, several appropriations acts amended Section 236 of the NHA with respect to excess rental income received by owners of Section 236 projects (mortgagors).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) (FY1999 Appropriations Act) amended Section 236(g) of the NHA (12 U.S.C. 1715z–1(g)) to permit the Secretary to authorize mortgagors to retain excess rental income (Excess Income) upon terms and conditions established by HUD. (*See* section 227 of Title II of the FY1999 Appropriations Act.) Permitting mortgagors to retain Excess Income is an exception to the general requirement of section 236(g) of the NHA that project owners must pay to HUD all rental charges collected on a unit-by-unit basis that are in excess of the basic rental charges.

The Departments of Veterans Affairs, Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74, approved October 20, 1999) (FY2000 Appropriations Act) also amended section 236(g) of the NHA to further address the conditions under which mortgagors are eligible to retain Excess Income. (*See* section 532 of Title V of the FY2000 Appropriations Act.) Section 236(g) of the NHA, as amended by the FY2000 Appropriations Act, allows mortgagors to retain Excess Income, if so authorized by the Secretary and if the income is used for the project upon terms and conditions established by HUD. The FY2000 Appropriations Act also authorizes the Secretary to permit mortgagors to retain Excess Income for non-project use after a determination by HUD that the project is well-maintained and in good condition and that the mortgagor has not engaged in material adverse financial or managerial actions or omissions as described in section 516 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note).

Section 532 of the FY2000 Appropriations Act also authorized HUD, for FY2000, to return any Excess Income remitted to HUD by mortgagors since October 21, 1998, the date of enactment of the FY1999 Appropriations Act.

Section 861(b) of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) also did not amend section 236(g) of the NHA, but nevertheless provided permanent authority for HUD to return Excess Income remitted to HUD by mortgagors since October 20, 1999, the date of enactment of the FY2000 Appropriations Act.

II. August 12, 2002, Proposed Rule

On August 12, 2002, HUD published a proposed rule (67 FR 52526) to establish the terms and procedures by which Section 236 mortgagors would be eligible to retain some or all of their Excess Income for project or non-project use, as well as the procedures for requesting a return of Excess Income remitted to HUD. HUD received three public comments in response to the August 12, 2002, proposed rule. The commenters consisted of an individual and two associations. In response to the public comments, this final rule makes certain changes to the August 12, 2002, proposed rule as described in Section III of this preamble.

III. Changes to the Proposed Rule in This Final Rule

The following changes to the August 12, 2002, proposed rule are made by this final rule. Section IV of this preamble discusses the public comments that prompted these changes.

1. The inclusion of ''New Authorized Rent under the Section 8 mark-to-market program'' in § 236.60(a) of the proposed rule has been removed in the final rule. The reference to New Authorized Rent is not necessary because there is no Excess Income generated with units receiving Section 8 assistance.

2. The term ''fully'' is added to § 236.60(d)(1)(i), which now reads: ''The mortgagor's Reserve for Replacement is not fully funded.''

3. The term ''uncorrected'' is added to § 236.60(d)(1)(ii)(C), which now reads: ''The existence of uncorrected Exigent Health and Safety (EHS) deficiencies identified by REAC.''

4. The term ''current'' is removed from and the phrase ''and those repair or maintenance needs are still outstanding'' is added to § 236.60(d)(1)(ii)(D), which now reads: ''A Comprehensive Needs Assessment that finds there are significant repair or maintenance needs, and those repair or maintenance needs are still outstanding.''

5. Section 236.60(e) is revised to remove the requirement that mortgagors request permission annually to retain Excess Income for a specific ongoing purpose where the purpose extends beyond the current fiscal year.

6. A sentence is added to § 236.60(g)(2) to clarify that the time period covered by the narrative description that must be submitted annually is the prior fiscal year of the project, and not the calendar year or HUD's fiscal year.

IV. Discussion of Public Comments Submitted on the Proposed Rule

This section of the preamble presents a discussion of major issues and questions raised by the three commenters. The issues are organized according to the section of the rule for which an issue was raised by a commenter or commenters. HUD's response follows the presentation of the commenter's issue or question.

Section 236.60(c), (e), and (g)—Requests To Retain Excess Income; Monthly Report; and Narrative Description

Comment: A mortgagor should not have to request annual HUD approval under § 236.60(e) of the rule to retain Excess Income for project use if the mortgagor complies with all reporting requirements of § 236.60(g)(1) and (2). The annual request is a waste of resources, and a late request would jeopardize the use of Excess Income for supportive services or capital improvements. Section 236.60(c)(3)(ii), which requires that the mortgagor's request to retain Excess Income identify the period from which Excess Income is being requested, and § 236.60(e), which requires that the mortgagor's request be submitted each fiscal year, should be eliminated. If these sections are not eliminated, HUD should offer an option that allows the mortgagor to request retention of Excess Income one time (as opposed to annually) for continuing project use of Excess Income.

HUD Response: A mortgagor that requests to retain Excess Income for project use must describe the proposed use of Excess Income, the period from which the Excess Income is being retained, and the amount or percentage of Excess Income that is requested. HUD agrees that in some circumstances, the submission of a request to retain Excess Income on an annual basis should not be necessary. Accordingly, § 236.60(e) is revised in this final rule to provide that a mortgagor requesting approval to retain Excess Income for a specific ongoing purpose where the purpose extends beyond the current fiscal year may (1) submit a request stating the proposed use of Excess Income, and (2) advise that the intended use will extend beyond the current fiscal year. If HUD approves the mortgagor's request, the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same. The mortgagor will still be required to submit the monthly report of Excess Income and the end of year narrative. In the event that the use of Excess Income changes, the mortgagor must notify HUD of the change and submit a new request to retain Excess Income at least 90 days prior to the date the mortgagor intends to begin retaining Excess Income for the new purpose.

Section 236.60(d)—Retention for Non-Project Use

Comment: Section 236.60(d) allows retention of Excess Income for non-project use. Funds collected from residents living in the project should be used only for project use, and the rule should not allow these funds to be diverted to the mortgagor for other non-related expenditures.

HUD Response: Retention of Excess Income for non-project use is permitted by statute and approved by HUD only for those mortgagors that meet specific requirements as outlined in § 236.60(d).

Section 236.60(d)(1)(i)—Reserve for Replacement

Comment: The proposed rule provides that Excess Income cannot be retained for non-project use, if the mortgagor's Reserve for Replacement is not funded. The rule should be revised to provide that Excess Income cannot be retained for non-project use, if the mortgagor's reserve for replacement is not ''fully funded.'' Since retention of Excess Income is not an entitlement, it is important that there be an affirmative demonstration that the future needs of the project are being fully addressed before additional public funds are disbursed to a mortgagor for non-project purposes.

HUD Response: HUD agrees with the comment, and § 236.60(d)(1)(i) is revised in the final rule to read ''The mortgagor's Reserve for Replacement is not fully funded.'' (Reserve for Replacement is a defined term in the Section 236 program regulations.)

Section 236.60(d)(1)(ii)(B)—Real Estate Assessment Center (REAC) Score

Comment: Section 236.60(d)(1)(ii)(B) provides that a REAC physical inspection score of below 60 is a basis for determining that a project is not ''well-maintained housing in good condition'' and not eligible for retention of Excess Income for non-project use. This regulatory section sets a housing condition standard that is too low. Setting the standard so low presents risks that public funds will be allowed for non-project use when the project may have significant physical needs. HUD should raise this threshold to a higher level, such as 80 points, or set the threshold at a certain portion of the project inventory above the minimally acceptable score of 60, such as the upper two-thirds of projects with scores above 60.

HUD Response: The REAC score of 60 is consistent with other HUD programs that require a minimum REAC physical inspection score of 60 in order to participate in a particular HUD program.

Section 236.60(d)(1)(ii)(C)—Exigent Health and Safety Deficiencies

Comment: The requirement that a project must not receive any exigent health and safety (EHS) deficiencies in order for a mortgagor to be eligible for retention of Excess Income is too stringent. Only those EHS deficiencies that cannot be easily remedied should prevent a mortgagor from being permitted to retain Excess Income.

HUD Response: HUD agrees that deficiencies that are corrected should not prevent a mortgagor from being eligible to retain Excess Income, and § 236.60(d)(1)(ii)(C) is changed to read: ''The existence of uncorrected Exigent Health and Safety (EHS) deficiencies identified by REAC.''

Section 236.60(d)(1)(ii)(D)—Comprehensive Needs Assessment

Comment: Not all projects have had a ''Comprehensive Needs Assessment'' and many assessments are several years old and out of date. HUD could require up-to-date assessments on all projects for which a mortgagor requests to retain Excess Income, or for projects with REAC scores of less than 80. HUD could also provide that funding of these assessments are an eligible use of Excess Income for non-project use.

HUD Response: HUD notes that proposed § 236.60(d)(1)(ii)(D) refers to ''current repair or maintenance needs'' and was intended to cover repair or maintenance needs that are still outstanding regardless of the age of the Comprehensive Needs Assessment.'' To makes this intent clear, § 236.60(d)(1)(ii)(D) is changed in this final rule to read: ''A Comprehensive Needs Assessment that finds there are significant repair or maintenance needs, and those repair or maintenance needs are still outstanding.''

Section 236.60(g)(1) and (2)—Post-Approval Requirements

Comment: The requirement for both monthly and annual reporting is an unnecessary burden. The rule should provide only for an annual report that describes the uses of Excess Income in the prior fiscal year and quarterly filing of the HUD 93104.

HUD Response: The reporting requirements are not new. Section 236 mortgagors have always been required to submit a monthly report of Excess Income to HUD. This form enables HUD to know the amount of Excess Income,

if any, that is generated each month. Additionally, if the mortgagor has been approved to retain Excess Income, it enables HUD to know the amount that the mortgagor is retaining each month. In addition, HUD requires an audited annual financial statement that enables HUD staff to monitor the project's accounts. This is a requirement in the regulatory agreement.

Section 236.60(g)(2)—Annual Narrative Description

Comment: Section 236.60(g)(2) requires mortgagors that retain Excess Income for project use to provide HUD, on an annual basis, two copies of a narrative description of the amount and the uses made of Excess Income during the prior fiscal year. Clarification is needed concerning to which fiscal year HUD refers in this section (the calendar year, HUD's fiscal year, or the project's fiscal year).

HUD Response: Section 236.60(g)(2) of the proposed rule states that the requirement is for the prior fiscal year of the project. The calendar year or HUD's fiscal year is not relevant to this requirement unless the fiscal year of the project happens to coincide with the calendar year or HUD's fiscal year. For the sake of clarity, the final rule includes this explicit statement.

Additional Paperwork Burden Issues

Comment: Under existing regulatory requirements, projects that have no ability to generate Excess Income (*e.g.*, projects that have been marked down to market) must still submit a monthly report. This is an unnecessary requirement and paperwork burden.

HUD Response: Although a project may not generate Excess Income for a year or two after being marked down to market, Excess Income may be generated in future years. This requirement remains a method by which HUD can monitor projects.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and have been assigned OMB control number 2502–0086. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''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 as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of 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 the private sector. This rule will not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) at the proposed rule stage of this final rule, and continues to apply. The FONSI is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule only establishes the requirements for mortgagors of section 236 projects to retain and use Excess Income.

Executive Order 13132, Federalism

Executive Order 13132 (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 for Section 236 program assistance is 14.103.

List of Subjects in 24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 236 as follows:

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION

■ 1. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

■ 2. In Subpart A, a new § 236.60 is added to read as follows:

§ 236.60 Excess Income.

(a) *Definition.* Excess Income consists of cash collected as rent from the residents by the mortgagor, on a unit-by-unit basis, that is in excess of the HUD-approved unassisted Basic Rent. The unit-by-unit requirement necessitates that, if a unit has Excess Income, the Excess Income must be returned to HUD. It is not permissible to do an aggregate calculation of the Excess Income for all occupied rent-paying units, and then to offset or subtract from that figure any unpaid rent from occupied or vacant units, before remitting Excess Income to HUD.

(b) *General requirement to return Excess Income.* Except as otherwise provided in this section, or as agreed to by HUD pursuant to a plan of action approved under 24 CFR part 248 or in connection with an adjustment of contract rents under section 8 of the United States Housing Act of 1937 Act (1937 Act) (42 U.S.C. 1437f), the mortgagor shall agree to pay monthly to HUD the total of all Excess Income in accordance with procedures prescribed by HUD.

(c) *Retention of Excess Income for project use.*—(1) *Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for project use unless the mortgagor owes

prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement.

(2) *Eligible uses.* Excess Income retained by a mortgagor for project use may be used for any necessary and reasonable operating expense of the project. Examples of necessary and reasonable operating expenses are:

(i) Project operating shortfalls, including repair costs;

(ii) Repair costs identified in the Comprehensive Needs Assessment, including increasing deposits to the Reserve Fund for Replacements to a limit necessary to adequately fund the reserve;

(iii) Service coordinators;

(iv) Neighborhood networks located at the project for project residents; and

(v) Enhanced supportive services for the residents.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested;

(ii) The period from which Excess Income is being requested; and

(iii) The proposed use of the requested Excess Income.

(d) *Retention of Excess Income for non-project use.*—(1) *Eligible mortgagors.* Any mortgagor of a project receiving Section 236 interest reduction payments may apply to retain Excess Income for non-project use unless the mortgagor owes prior Excess Income and is not current in payments under a HUD-approved Workout or Repayment Agreement or the mortgagor falls within any of the following categories:

(i) The mortgagor's Reserve for Replacement is not fully funded;

(ii) The mortgagor's project is not well maintained housing in good condition, as evidenced by:

(A) Failure to maintain the project in decent, safe, and sanitary condition and in good repair in accordance with HUD's Uniform Physical Condition Standards and Inspection Requirements in 24 CFR part 5, subpart G;

(B) A score below 60 on the physical inspection conducted by HUD's Real Estate Assessment Center (REAC);

(C) The existence of uncorrected Exigent Health and Safety (EHS) deficiencies identified by REAC; or

(D) A Comprehensive Needs Assessment that finds there are significant repair or maintenance needs, and those repair or maintenance needs are still outstanding;

(iii) The mortgagor has engaged in any one of the following material adverse financial or managerial actions or omissions:

(A) Materially violating any federal, state, or local law or regulation with regard to the project or any other federally assisted project, including any applicable civil rights law or regulation, after receipt of notice and an opportunity to cure;

(B) Materially breaching a contract for assistance under section 8 of the 1937 Act, after receipt of notice and an opportunity to cure;

(C) Materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, after receipt of notice and an opportunity to cure;

(D) Repeatedly and materially violating any federal, state, or local law or regulation, including any applicable civil rights law or regulation, with regard to the project or any other federally assisted project;

(E) Repeatedly and materially breaching a contract for assistance under section 8 of the 1937 Act;

(F) Repeatedly and materially violating any applicable regulatory or other agreement with HUD or a participating administrative entity, including failure to submit audited financial statements or required tenant data;

(G) Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project;

(H) Materially failing to maintain the project in decent, safe, and sanitary condition and in good repair after receipt of notice and a reasonable opportunity to cure; or

(I) Committing any actions or omissions that would warrant suspension or debarment by HUD.

(2) *Eligible uses.* Excess Income retained by a mortgagor for non-project use may be used for any purpose, except that the non-project use of Excess Income by a nonprofit entity mortgagor is limited to activities that carry out the entity's nonprofit purpose.

(3) *Request for approval to retain Excess Income.* A mortgagor must submit a written request to retain Excess Income for non-project use to the local HUD Field Office. The request must describe:

(i) The amount or percentage of Excess Income requested; and

(ii) The period from which Excess Income is being requested.

(e) *Timing of request to retain Excess Income.*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, a mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year before any other date during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year.

(2) *Specific ongoing purpose.* A mortgagor requesting approval to retain Excess Income for a specific, ongoing purpose where the purpose extends beyond the current fiscal year may submit a request that describes the proposed use of Excess Income and advises that the intended use will extend beyond the current fiscal year. If HUD approves the request, following review of the request in accordance with paragraph (f) of this section, the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same. The mortgagor will still be required to submit the Monthly Report of Excess Income and the end of year narrative under paragraph (g) of this section. If the use of Excess Income changes, the mortgagor must notify HUD of the change and submit a new request to retain Excess Income 90 days prior to the date the mortgagor intends to begin retaining Excess Income for the new purpose.

(f) *HUD review and response procedure.* HUD will review a mortgagor's request to retain Excess Income and issue a letter of approval or denial as follows:

(1) *Approval letter.* The approval letter from HUD permitting the mortgagor to retain Excess Income must, at a minimum, assert:

(i) Retention rights are for the time specified in the approval letter, but cannot extend beyond the current fiscal year except as provided in paragraph (e)(2) of this section;

(ii) Failure of the mortgagor to maintain the Reserve for Replacement account in a fully funded amount at all times is grounds for HUD to rescind the approval;

(iii) Failure of the mortgagor to maintain the project in a decent, safe, and sanitary condition and in good repair at all times is grounds for HUD to rescind the approval;

(iv) If the Excess Income requested for project use is not used for the proposed purpose described in the mortgagor's request, the income must be returned to HUD, unless the mortgagor has obtained prior HUD approval for the alternate use; and

(v) The failure of a mortgagor to return retained Excess Income to HUD for not complying with applicable requirements is a violation of the Regulatory Agreement for which there are enforcement remedies that HUD may take.

(2) *Denial letter.* A letter from HUD denying a mortgagor's request to retain Excess Income must cite the specific

reasons for denial and state what requirements the mortgagor must meet to receive HUD's approval to retain Excess Income.

(3) *Environmental review.* Before approving a request to retain Excess Income for project use, HUD will perform an environmental review to the extent required under 24 CFR part 50 for activities that are not excluded under 24 CFR 50.19(b).

(g) *Post-approval requirements.*—(1) *Monthly report.* A mortgagor approved to retain Excess Income must continue to prepare and submit to HUD a revised Form HUD–93104, Monthly Report of Excess Income, or successor form.

(2) *Other reporting requirements.* A mortgagor that retains Excess Income for project use must provide HUD, on an annual basis, two copies of a narrative description of the amount and the uses made of Excess Income during the prior fiscal year of the project. The calendar year or HUD's fiscal year is not relevant to this requirement unless the fiscal year of the project coincides with the calendar year or HUD's fiscal year. HUD may request additional follow-up information on a case-by-case basis. The report must contain the following certification: ''I certify that (1) the amount of Excess Income retained and used was for the purposes approved by HUD; (2) all eligibility requirements for retaining Excess Income were satisfied for the entire reporting period; and (3) all the facts and data on which this report is based are true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal or civil penalties, or both (18 U.S.C. 1001, 1010, 1012; and 31 U.S.C. 3729 and 3802).''

(h) *Return of remitted Excess Income.*—(1) *For project use.* A mortgagor that is eligible to retain Excess Income for project use under paragraph (c)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998, in accordance with the procedures of paragraph (c)(3) of this section. A mortgagor that is eligible to retain Excess Income for project use may not apply for the return of Excess Income that was:

(i) Repaid in accordance with a Workout or Repayment Agreement with HUD; or

(ii) Generated between October 1, 2000, and October 27, 2000, by projects with state agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages

(2) *For non-project use.* A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may apply for the return of Excess Income remitted to HUD since October 21, 1998, in accordance with paragraph (d)(3) of this section. A mortgagor that is eligible to retain Excess Income for non-project use under paragraph (d)(1) of this section may not apply to retain Excess Income that was:

(i) Repaid in accordance with a Workout or Repayment Agreement with HUD; or

(ii) Generated between October 1, 2000, and October 27, 2000, by projects with state agency non-insured Section 236-assisted mortgages or HUD-held Section 236 mortgages.

(3) *Reporting requirement.* A mortgagor that receives returned Excess Income requested for project use is subject to the reporting requirements of paragraph (g)(2) of this section with respect to the returned Excess Income.

(4) *Time limit.* After September 1, 2005, a mortgagor may no longer apply for the return of any Excess Income remitted to HUD.

(i) *HUD withdrawal of approval to retain Excess Income.*—(1) *Bases for withdrawal of approval.* HUD may withdraw approval for any of the following reasons:

(i) If, at any time after approval, a mortgagor fails to meet the eligibility requirements of paragraph (c)(1) or (d)(1) of this section, as applicable;

(ii) If the mortgagor does not use the Excess Income requested for project use for purposes and activities as approved by HUD; or

(iii) If at any time during the fiscal year that such approval is in effect, mortgagor, approved to retain Excess Income for non-project use, fails to maintain the project in decent, safe, and sanitary condition and in good repair, or maintain the Reserve for Replacement account in a fully funded amount.

(2) *Notification of withdrawal of approval.* HUD will notify the mortgagor by certified mail that the authorization to retain Excess Income is withdrawn. The notification will state:

(i) Specific reasons for HUD's withdrawal of approval;

(ii) The effective termination date, which may be the date of the violation resulting in the withdrawal or the date of HUD's determination that the mortgagor was out of compliance;

(iii) The amount of retained Excess Income improperly retained that must be returned to HUD; and

(iv) The actions that the mortgagor must take to restore the authorization to retain Excess Income.

(3) *Mortgagor's request for reconsideration.*—(i) *Letter of reconsideration.* A mortgagor may request that HUD reconsider its decision by submitting, to the Hub/Field Office Director or other party identified by HUD in the notification, within 30 days of receipt of the notification of withdrawal, a letter stating the basis for reconsideration. The letter must include documentation supporting a review of the withdrawal.

(ii) *HUD response.* Within 30 days of HUD's receipt of the mortgagor's request for reconsideration, HUD will make a final determination and respond in writing to the mortgagor. HUD's response may:

(A) Affirm the withdrawal of authority to retain Excess Income;

(B) Reverse the withdrawal of authority to retain Excess Income; or

(C) Request additional information from the mortgagor before affirming or reversing the withdrawal of authority to retain Excess Income.

Dated: August 24, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–19862 Filed 8–31–04; 8:45 am]

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Federal Register

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT53

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2004–05 season.

DATES: This rule is effective on September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2004

On March 22, 2004, we published in the **Federal Register** (69 FR 13440) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2004–05 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 9, 2004, we published in the **Federal Register** (69 FR 32418) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2004–05 duck hunting season. The June 9 supplement also provided detailed information on the 2004–05 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) meetings.

On June 23 and 24, 2004, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2004–05 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2004–05 regular waterfowl seasons. On July 21, 2004, we published in the **Federal Register** (69 FR 43694) a third document specifically dealing with the proposed frameworks for early-season regulations.

On July 28–29, 2004, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2004–05 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2004–05 late-season migratory bird hunting regulations on August 24, 2004, in the **Federal Register** (69 FR 52128). On August 30, 2004, we published a fifth document in the **Federal Register** which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES**.

Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–1996, and then updated in 1998. We have updated again this year. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected

welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *www.migratorybirds.gov*.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004).

This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

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

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (MBTA), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, it will reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the MBTA. Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there was a delay in the effective date

of these regulations after this final rulemaking, the States would have insufficient time to implement their selected season dates and limits and start their seasons in a timely manner. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 25, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits Bag	Limits Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 4-Nov. 1	15	15
Scaly-naped pigeons	Sept. 4-Nov. 1	5	5
Ducks	Nov. 13-Dec. 20 &	6	12
	Jan. 15-Jan. 31	6	12
Common Moorhens	Nov. 13-Dec. 20 &	6	12
	Jan. 15-Jan. 31	6	12
Common Snipe	Nov. 13-Dec. 20 &	8	16
	Jan. 15-Jan. 31	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon. Hunting is closed in the area known as Caño Tiburones.

Closed Areas: Closed areas are described in the July 21, 2004, Federal Register (69 FR 43694).

(b) Virgin Islands

	Season Dates	Limits Bag	Limits Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 21, 2004, Federal Register (69 FR 43694).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

Area	Ducks(1)	Dark Geese(2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes(4)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season , including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed statewide.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a daily bag and possession limit of 1. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession. In Unit 10 (except Unimak Island) the season for Canada geese is closed. Canada goose season will be closed in Unit 8 (Kodiak).

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 21, 2004, Federal Register (69 FR 43694).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits Bag	Limits Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 11 only	15	15
½ hour before sunrise to sunset	Sept. 12-Oct. 2 &	15	15
	Oct. 30-Nov. 20 &	15	
	Dec. 18-Jan. 2	15	15
South Zone			
12 noon to sunset	Oct. 9 only	12	12
½ hour before sunrise to sunset	Oct. 10-Nov. 6 &	12	12
	Nov. 24-Nov. 28 &	12	12
	Dec. 11-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 1-Sept. 18	12	24
½ hour before sunrise to sunset	Oct. 18-Oct. 30 &	12	24
	Dec. 6-Jan. 13	12	24
Florida (1)			
12 noon to sunset	Oct. 2-Oct. 25	12	24
½ hour before sunrise to sunset	Nov. 13-Nov. 28 &	12	24
	Dec. 11-Jan. 9	12	24
Georgia			
12 noon to sunset	Sept. 4 & Oct. 2	12	24
½ hour before sunrise to sunset	Sept. 5-Sept. 18 &	12	24
	Oct. 3-Oct. 11 &	12	24
	Nov. 25-Jan. 8	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 21 &	15	30
	Nov. 6-Nov. 14	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 5-Nov. 14 &	15	30
	Nov. 25-Nov. 28	15	30
Kentucky			
11 a.m. to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 24 &	15	30
	Nov. 25-Nov. 30	15	30

	Season Dates	Limits Bag	Limits Possession
Louisiana			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 9-Oct. 10 &	12	24
	Dec. 18-Dec. 19	12	24
½ hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 11-Nov. 14 &	12	24
	Dec. 20-Jan. 10	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 16	12	24
½ hour before sunrise to sunset	Nov. 12-Nov. 20 &	12	24
	Dec. 18-Jan. 1	12	24
Michigan	Sept. 1-Oct. 30	15	30
Minnesota	Sept. 1-Oct. 30	15	30
Mississippi	Sept. 4-Sept. 19 &	15	30
	Oct. 9-Oct. 23 &	15	30
	Dec. 18-Jan. 15	15	30
North Carolina			
12 noon to sunset	Sept. 4-Sept. 11	12	24
½ hour before sunrise to sunset	Sept. 12-Oct. 9 &	12	24
	Nov. 22-Nov. 27 &	12	24
	Dec. 20-Jan. 15	12	24
Ohio	Sept. 1-Oct. 17 &	15	30
	Dec. 21-Jan. 2	15	30
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 5 &	12	24
	Oct. 23-Nov. 20 &	12	24
	Dec. 27-Jan. 1	12	24
Rhode Island			
12 noon to sunset	Sept. 25-Oct. 11	12	24
½ hour before sunrise to sunset	Oct. 16-Nov. 21 &	12	24
	Dec. 29-Jan. 13	12	24
South Carolina			
12 noon to sunset	Sept. 4-Sept. 6	12	24
½ hour before sunrise to sunset	Sept. 7-Oct.9 &	12	24
	Nov. 20-Nov. 27 &	12	24
	Dec. 21-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Sept. 26 &	15	30
	Oct. 9-Oct. 24 &	15	30
	Dec. 18-Jan. 4	15	30
Virginia			
12 noon to sunset	Sept. 4-Sept. 25	12	24
½ hour before sunrise to sunset	Oct. 9-Nov. 6 &	12	24
	Dec. 28-Jan. 15	12	24
West Virginia			
12 noon to sunset	Sept. 1 only	12	24
½ hour before sunrise to sunset	Sept. 2-Oct. 9 &	12	24
	Oct. 25-Nov. 6 &	12	24
	Dec. 15-Jan. 1	12	24
Wisconsin	Sept. 1-Oct. 30	15	30
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 4-Sept. 26 &	15	30
	Oct. 9-Oct. 24 &	15	30
	Dec. 20-Jan. 9	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas (2)	Sept. 1-Oct. 14	15	30
	Nov. 1-Nov. 16	15	30
Missouri (3)	Sept. 1-Nov. 9	12	24
Montana	Sept. 1-Oct. 30	15	30
Nebraska (2)	Sept. 1-Oct. 30	15	30
New Mexico (2)			
North Zone	Sept. 1-Oct. 30	15	30
South Zone	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma (2)	Sept. 1-Oct. 30	15	30
South Dakota	Sept. 1-Oct. 15	15	30

	Season Dates	Limits Bag	Possession
Texas (4)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 31 &	12	24
	Dec. 26-Jan. 3	12	24
South Zone			
Special Area	Sept. 24-Nov. 10 &	12	24
	Dec. 26-Jan. 12	12	24
(Special Season)			
12 noon to sunset	Sept. 4-Sept. 5 &	10	20
	Sept. 11-Sept. 12	10	20
Remainder of the			
South Zone	Sept. 24-Nov. 10 &	12	24
	Dec. 26-Jan. 16	12	24
Wyoming	Sept. 1-Oct. 30	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 15 &	10	20
	Nov. 19-Jan. 2	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 13-Dec. 27	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah (6)	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 6-Nov. 28 &	10	10
	Dec. 1-Dec. 26 &	10	10
	Dec. 29-Jan. 17	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In Kansas, Nebraska, New Mexico, Oklahoma the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(3) In Missouri, the daily bag limit is 12 and the possession limit is 24 mourning and white-winged doves in the aggregate.

(4) In Texas, the daily bag limit is either15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 60-day season or 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 22 through January 5, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(6) In Utah and the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits Bag	Possession
Arizona	Sept. 24-Oct. 4	5	10
California			
North Zone	Sept. 18-Sept. 26	2	4
South Zone	Dec. 18-Dec. 26	2	4
Colorado	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	4
Utah (2)	Sept. 1-Sept. 30	5	10
Washington	Sept. 15-Sept. 23	2	4

(1) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(2) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 21, 2004, Federal Register (69 FR 43694).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
Connecticut (3)	Sept. 1-Sept. 3 & Sept. 7-Nov. 6	Sept. 1-Sept. 3 & Sept. 7-Nov. 6	Oct. 23-Nov. 20	Oct. 23-Nov. 20
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Dec. 11 & Dec. 22-Dec. 31	Nov. 22-Jan.31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 18-Jan. 16	Nov. 1-Feb. 15
Georgia	Sept. 25-Dec. 3	Sept. 25-Dec. 3	Dec. 18-Jan. 16	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 5-Nov. 26 & Jan. 15-Jan. 22	Sept. 30-Nov. 26 & Dec. 13-Jan. 29
Massachusetts (4)	Sept. 1-Nov. 8	Closed	Deferred	Sept. 1-Dec. 15
New Hampshire	Closed	Closed	Oct. 1-Oct. 30	Sept. 15-Oct. 30
New Jersey (5)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 21-Nov. 13	Sept. 18-Jan. 3
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 13-Nov. 27 & Dec. 24-Jan. 1	Sept. 18-Jan. 3
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
North Carolina	Sept. 1-Sept. 4 & Sept. 6-Nov. 10	Sept. 1-Sept. 4 & Sept. 6- Nov. 10	Dec. 16-Dec. 25 & Dec. 27-Jan. 15	Nov. 15-Feb. 28
Pennsylvania	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 13	Oct. 16-Nov. 20
Rhode Island (7)	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Oct. 28-Nov. 26	Sept. 4-Nov. 12
South Carolina	Sept. 27-Oct. 2 & Oct. 13-Dec. 15	Sept. 27-Oct. 2 & Oct. 13-Dec. 15	Jan. 2-Jan. 31	Nov. 14-Feb. 28
Vermont	Closed	Closed	Deferred	Deferred
Virginia	Sept. 13-Nov. 20	Sept. 13-Nov. 20	Oct. 30-Nov. 13 & Dec. 18-Jan. 1	Oct. 7-Oct. 11 & Oct. 22-Jan. 31
West Virginia	Sept. 1-Nov. 6	Closed	Oct. 22-Nov. 20	Sept. 1-Dec. 11
MISSISSIPPI FLYWAY				
Alabama (8)	Sept. 18-Sept. 26 & Nov. 21-Jan. 20	Sept. 18-Sept. 26 & Nov. 21-Jan. 20	Dec. 18-Jan. 31	Nov. 13-Feb. 27
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 6-Dec. 5 & Dec. 25-Jan. 8	Nov. 6-Feb. 20
Illinois (9)	Sept. 11-Nov. 19	Closed	Oct. 16-Nov. 29	Sept. 11-Dec. 26
Indiana (10)	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
Iowa (11)	Sept. 4-Nov. 12	Closed	Oct. 2-Nov. 15	Sept. 4-Nov. 28
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 15-Oct. 31 & Nov. 25-Jan. 23
Louisiana (12)	Sept. 18-Sept. 26	Sept. 18-Sept. 26	Dec. 18-Jan. 31	Deferred
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 25-Nov. 8	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 25-Nov. 8	Sept. 1-Nov. 4
Mississippi	Oct. 9-Dec. 17	Oct. 9-Dec. 17	Dec. 18-Jan. 31	Nov. 13-Feb. 27
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Nov. 28 & Dec. 6-Dec. 23
Tennessee	Deferred	Closed	Oct. 30-Dec. 13	Nov. 15-Feb. 28

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Wisconsin	Deferred	Closed	Sept. 25-Nov. 8	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 25-Nov. 8	Sept. 1-Dec. 16
New Mexico	Sept. 18-Nov. 26	Closed	Closed	Oct. 16-Jan. 30
North Dakota	Closed	Closed	Sept. 25-Oct. 31	Sept. 18-Nov. 28
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 11-Sept. 26 & Oct. 30-Dec. 22	Sept. 11-Sept. 26 & Oct. 30-Dec. 22	Dec. 18-Jan. 31	Oct. 30-Feb. 13
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
PACIFIC FLYWAY				
Arizona	Closed	Closed	Closed	Deferred
California	Closed	Closed	Closed	Oct. 16-Jan. 30
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho:				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nevada	Closed	Closed	Closed	Deferred
New Mexico	Sept. 18-Nov. 26	Closed	Closed	Oct. 16-Jan. 30
Oregon	Closed	Closed	Closed	Deferred
Utah	Closed	Closed	Closed	Deferred
Washington	Closed	Closed	Closed	Deferred
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.

(4) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) In Rhode Island, the sora and Virginia rails limits are 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail limits are 5 daily and 10 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.

(8) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(9) In Illinois, shooting hours are from sunrise to sunset.

(10) In Indiana, the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.

(11) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(12) In Louisiana, additional days occurring after September 30 will be published with the late season selections.

(13) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 21, 2004, Federal Register (69 FR 43694).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov. 8	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	-
Maine	Closed	--	--
New Jersey	Sept. 1-Nov. 8	10	20
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	8	16
North Carolina	Sept. 1-Sept. 4 &	15	30
	Sept. 6-Nov. 10	15	30
Pennsylvania	Sept. 1-Nov. 9	15	30
South Carolina	Sept. 27-Oct. 2 &	15	30
	Oct. 13-Dec. 15	15	30
Virginia	Deferred	--	-
West Virginia	Deferred	--	-
MISSISSIPPI FLYWAY			
Alabama	Sept. 18-Sept. 26 &	15	15
	Nov. 21-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana (2)	Sept. 18-Sept. 26	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 9-Dec. 17	15	30
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	-
CENTRAL FLYWAY			
New Mexico			
Zone 1	Oct. 16-Dec. 24	1	2
Zone 2	Oct. 16-Dec. 24	1	2
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 11-Sept. 26 &	15	30
	Oct. 30-Dec. 22	15	30
Wyoming	Deferred	--	-
PACIFIC FLYWAY			
All States	Deferred	--	-

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Connecticut (1)	Sept. 22-Jan. 22	5	10
Delaware	Sept. 18-Jan. 20	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	-
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire (2)	Oct. 1-Jan. 15	7	14
New Jersey	Sept. 18-Jan. 18	7	14
New York	Oct. 16-Jan. 30	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 9-Jan. 23	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	-

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Connecticut, the daily bag limit may include no more than 4 scoters or 4 oldsquaws.

(2) In New Hampshire, the daily bag limit may include no more than 4 scoters, 4 eiders, or 4 oldsquaws.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Delaware (1)(2)	Sept. 2-Sept. 11	4	8
Florida (3)	Sept. 25-Sept. 29	4	8
Georgia	Sept. 18-Sept. 26	4	8
Maryland (1)	Sept. 9-Sept. 18	4	8
North Carolina (1)	Sept. 9-Sept. 18	4	8
South Carolina (4)	Sept. 17-Sept. 25	4	8
Virginia (1)	Sept. 16-Sept. 25	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 18-Sept. 26	4	8
Arkansas (4)	Sept. 18-Sept. 26	4	8
Illinois (4)	Sept. 11-Sept. 19	4	8
Indiana (4)	Sept. 1-Sept. 9	4	8
Iowa (5)			
North Zone	Sept. 18-Sept. 22	--	--
South Zone	Sept. 25-Sept. 26	--	--
Kentucky (3)	Sept. 15-Sept. 19	4	8
Louisiana	Sept. 18-Sept. 26	4	8
Mississippi	Sept. 18-Sept. 26	4	8
Missouri (4)	Sept. 11-Sept. 19	4	8
Ohio (4)	Sept. 1-Sept. 9	4	8
Tennessee (3)	Sept. 11-Sept. 15	4	8
CENTRAL FLYWAY			
Colorado (1)	Sept. 4-Sept. 12	4	8
Kansas			
Low Plains	Sept. 18-Sept. 26	4	8
High Plains	Sept. 18-Sept. 25	4	8
Nebraska (1)	Sept. 11-Sept. 19	4	8
New Mexico	Sept. 18-Sept. 26	4	8

	Season Dates	Limits Bag	Limits Possession
Oklahoma			
Low Plains	Sept. 11-Sept. 19	4	8
High Plains	Sept. 11-Sept. 19	4	8
Texas	Sept. 18-Sept. 26	4	8

(1) Area restrictions. See State regulations.

(2) In Delaware, the shooting hours are from ½ hour before sunrise to 10:00 a.m.

(3) In Florida, Kentucky, and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(4) Shooting hours are from sunrise to sunset.

(5) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 1-Sept. 3 &	8	16
	Sept. 7-Sept. 30	8	16
South Zone	Sept. 16-Sept. 30	8	16
Delaware	Sept. 1-Sept. 15	8	16
Florida (1)	Sept. 4-Sept. 29	5	10
Georgia	Sept. 4-Sept. 26	5	10
Maine	Sept. 7-Sept. 25	4	8
Maryland			
Eastern Unit	Sept. 1-Sept. 15	8	16
Western Unit	Sept. 1-Sept. 25	8	16
Massachusetts			
Central Zone	Sept. 7-Sept. 25	5	10
Coastal Zone	Sept. 7-Sept. 25	5	10
Western Zone	Sept. 7-Sept. 25	5	10
New Hampshire	Sept. 7-Sept. 25	5	10
New Jersey	Sept. 1-Sept. 30	8	16
New York			
Lake Champlain Zone	Sept. 7-Sept. 25	3	6
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Long Island Zone (3)	Sept. 7-Sept. 30	8	16
North Carolina (4)	Sept. 1-Sept. 30	5	10
Pennsylvania			
Pymatuning Zone	Closed	--	-
Rest of State	Sept. 1-Sept. 25	8	16
Rhode Island	Sept. 1-Sept. 30	8	16
South Carolina			
Early-Season Hunt Unit	Sept. 10-Sept. 25	8	16
Vermont			
Lake Champlain Zone	Sept. 7-Sept. 25	3	6
Interior Vermont Zone	Sept. 7-Sept. 25	5	10
Connecticut River Zone (6)	Sept. 7-Sept. 25	5	10
Virginia	Sept. 1-Sept. 25	5	10
West Virginia	Sept. 1-Sept. 18	5	10
MISSISSIPPI FLYWAY			
Alabama	Sept. 1-Sept. 15	5	10
Illinois			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	2	4
Central Zone	Sept. 1-Sept. 15	2	4
South Zone	Sept. 1-Sept. 15	2	4
Indiana	Sept. 1-Sept. 15	5	10
Iowa (3)			
South Goose Zone			
Des Moines Goose Zone	Sept. 1-Sept. 15	3	6
Cedar Rapids/Iowa City Goose Zone	Sept. 1-Sept. 15	3	6
Remainder of South Zone	Closed	-	-
North Goose Zone	Sept. 11-Sept. 12	2	4
Kentucky (3)	Sept. 4-Sept. 12	2	4

	Season Dates	Limits Bag	Limits Possession
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	5	10
Remainder	Sept. 1-Sept. 15	5	10
Minnesota			
Twin Cities Metro Zone	Sept. 4-Sept. 22	5	10
Southeast Goose Zone	Sept. 4-Sept. 22	2	4
Five Goose Zone	Sept. 4-Sept. 22	5	10
Northwest Goose Zone	Sept. 4-Sept. 15	2	4
Mississippi (5)	Sept. 1-Sept. 15	5	10
Ohio (3)	Sept. 1-Sept. 15	5	10
Tennessee	Sept. 1-Sept. 15	5	10
Wisconsin	Sept. 1-Sept. 3 &	5	10
	Sept. 7-Sept. 15	5	10
CENTRAL FLYWAY			
Kansas:			
Sept. Canada Goose Unit (3)	Sept. 4-Sept. 13	3	6
Nebraska (3)			
Sept. Canada Goose Unit	Sept. 11-Sept. 19	5	10
North Dakota	Sept. 1-Sept. 15	5	10
Oklahoma	Sept. 11-Sept. 20	3	6
South Dakota (3):			
West Unit	Sept. 1-Sept. 6	5	10
North Unit	Sept. 1-Sept. 24	5	10
South Unit	Sept. 11-Sept. 24	5	10
PACIFIC FLYWAY			
Colorado:	Sept. 11-Sept. 17	3	6
Oregon:			
Northwest Zone	Sept. 11-Sept. 20	5	10
Southwest Zone	Sept. 9-Sept. 15	5	10
East Zone	Sept. 9-Sept. 15	5	10
Washington:			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 11-Sept. 15	5	10
Mgmt. Area 4 & 5	Sept. 11-Sept. 12	3	6
Mgmt. Area 2A	Sept. 11-Sept. 15	3	6
Wyoming	Sept. 1-Sept. 8	2	4

(1) In Florida, the September Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of State Route 2, north of the Jim Woodruff Dam, and east of State Route 2.

(2) State permit required.

(3) See State regulations for additional information.

(4) In North Carolina, in Currituck and Dare Counties, the daily bag and possession limits are 2 and 4, respectively.

(5) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(6) In Vermont, the Connecticut River Zone set by New Hampshire, is the same as the New Hampshire Inland Zone.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Michigan (1)	
Canada:	
MVP Zone	Sept. 20-Oct. 10 & Dec. 4-Dec. 12
SJBP Zone	Sept. 20-Oct. 10 & Dec. 4-Dec. 12
White-fronted and Brant	Sept. 20-Dec. 12
Light geese	Sept. 20-Dec. 12
Wisconsin	
Horicon Zone	Sept. 16-Sept. 30
Collins Zone	Sept. 16-Sept. 30
Exterior Zone	Sept. 18-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	Deferred
Delaware	
Ducks, geese, and coots	Oct. 23
Florida	Deferred
Georgia	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Nov. 13 & 14
Maine	
Ducks, mergansers, and coots	Sept. 25
Maryland (1)	
Ducks, mergansers, coots, and Canada geese	Deferred
Massachusetts	Deferred
New Hampshire	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
New Jersey	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone	Sept. 25
South Zone	Oct. 2
Coastal Zone	Oct. 23
New York	
Ducks, mergansers, coots, and Canada geese (2)	
Long Island Zone	Oct. 30 & 31
Lake Champlain Zone	Sept. 25 & 26
Northeastern Zone	Sept. 18 & 19
Southeastern Zone	Sept. 25 & 26
Western Zone	Oct. 9 & 10
North Carolina	Deferred
Pennsylvania	
Ducks, mergansers, Canada geese, coots, and moorhens	Sept. 25
Rhode Island	
Ducks, mergansers and coots	Oct. 30 & 31
South Carolina	Deferred
Vermont	
Ducks, mergansers and coots	Sept. 25 & 26
Virginia	
Deferred	
West Virginia (3)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 25
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, geese, moorhens, and gallinules	Feb. 12 & 13
Arkansas	Deferred
Illinois	Deferred
Indiana	Deferred

	Season Dates
Iowa	
Ducks, geese, mergansers, and coots	
North Zone	Oct. 2 & 3
South Zone	Oct. 9 & 10
Kentucky	Deferred
Louisiana	Deferred
Michigan	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18 & 19
Minnesota (4)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18
Mississippi	Deferred
Missouri	Deferred
Ohio	Deferred
Tennessee	Deferred
Wisconsin	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18 & 19
CENTRAL FLYWAY	
Colorado	
Ducks, dark geese, mergansers, and coots	Sept. 25 & 26
Kansas (5)	Deferred
Montana	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
Nebraska (6)	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
New Mexico	
Ducks, geese, mergansers, coots, and gallinules	
North Zone	Oct. 2 & 3
South Zone	Oct. 16 & 17
North Dakota	
Ducks, geese, mergansers, and coots	Sept. 18 & 19
Oklahoma	Deferred
South Dakota (7)	
Ducks, Canada geese, mergansers, and coots	Sept. 18 & 19
Texas	Deferred
Wyoming	
Ducks, geese, mergansers, coots, and gallinules	
Zone 1	Sept. 25
Zone 2	Sept. 18
PACIFIC FLYWAY	
Arizona	Deferred
California	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 25 & 26
Colorado River Zone	Deferred
Southern Zone	Deferred
Southern San Joaquin Valley Zone	Deferred
Balance-of-State Zone	Deferred
Colorado	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
Idaho	
Ducks, Canada geese, mergansers, and coots	Sept. 24 & 25
Montana	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 25 & 26
Nevada	Deferred
New Mexico	
Ducks, mergansers, and coots	Oct. 9-Oct. 10
Oregon (8)	
Ducks, Canada geese, mergansers, coots, moorhens, and gallinules	Sept. 25 & 26
Utah	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 25
Washington	
Ducks, Canada geese, mergansers, and coots	Sept. 18 & 19
Wyoming	
Ducks, dark geese, mergansers, coots, and moorhens	Sept. 18

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Minnesota, the Canada goose limit is 5, except that in the Twin Cities, Southeast, and Northwest Goose Zones, Swan Lake Area, and Carlos Avery Wildlife Management Area the limit is 1.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 21, 2004, Federal Register (69 FR 43694).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits Bag	Limits Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 2-Nov. 28	3	6
Kansas (2)	Nov. 6-Jan. 2	3	6
Montana			
Regular Season Area (1)	Sept. 25-Nov. 21	3	6
Special Season Area (3)	Sept. 11-Sept. 19		1 per season
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Oct. 30-Oct. 31 &	1	2
	Nov. 20-Nov. 21 &	1	2
	Dec. 11-Dec. 12 &	1	2
	Jan. 15-Jan. 16	1	2
Southwest Area (3)(4)(5)	Nov. 6-Nov. 7 &	2	4
	Jan. 8-Jan. 9	2	4
Estancia Valley (4)(5)	Oct. 30-Oct. 31	2	4
North Dakota (2)			
Area 1	Sept. 18-Nov. 14	3	6
Area 2	Sept. 18-Oct. 24	2	4
Oklahoma (1)	Deferred	--	-
South Dakota (1)	Sept. 25-Nov. 21	3	6
Texas (1)	Deferred	--	-
Wyoming			
Regular Season Area (1)(5)	Sept. 18-Nov. 14	3	6
Riverton-Boysen Unit (Area 4) (3)(5)	Sept. 18-Oct. 8		1 per season
Big Horn and Park Counties (Area 6) (3)(5)	Sept. 18-Oct. 8		1 per season
PACIFIC FLYWAY			
Arizona (3)	Oct. 28-Oct. 30 &		2 per season
	Nov. 2-Nov. 4 &		2 per season
	Nov. 6-Nov. 8 &		2 per season
	Nov. 10-Nov. 12 &		2 per season
	Nov. 14-Nov. 16		2 per season
Idaho (3)	Sept. 1-Sept. 15	2	9 per season
Montana			
Special Season Area (3)	Sept. 11-Sept. 19		1 per season
Utah (3)			
Rich County	Sept. 4-Sept. 12		1 per season
Cache County	Sept. 4-Sept. 12		1 per season
Eastern Box Elder County	Sept. 4-Sept. 12		1 per season
Uintah County	Sept. 25-Oct. 3		1 per season

	Season Dates	Limits Bag	Limits Possession
Wyoming (3)(5)			
Bear River Area (Area 1)	Sept. 1-Sept. 14		1 per season
Salt River Area (Area 2)	Sept. 1-Sept. 8		1 per season
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8		1 per season

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas and North Dakota, each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit issued and validated by the State. The permit must be displayed to any authorized law enforcement official upon request.

(3) Hunting is by State permit only.

(4) In New Mexico, the seasonal bag limit is 2 in the Middle Rio Grande Valley Area, 4 in the Estancia Valley, and 8 in the Southwest Area.

(5) Shooting hours are one-half hour before sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 21, 2004, Federal Register (69 FR 43694). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in the August 19, 2003, Federal Register (68 FR 50016) and will be published again in a September 2004 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
Mourning dove	Sept. 20-Oct. 16 & Jan. 14-Jan. 22
Rail	Nov. 10-Dec. 16
Woodcock	Oct. 1-Oct. 14 & Feb. 1-Mar. 3
Snipe	Feb. 1-Mar. 8
Florida	
Mourning and white-winged doves	Oct. 26-Nov. 12 & Nov. 29-Dec. 10 & Jan. 10-Jan. 16
Rails	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 17 & Jan. 17-Mar. 10
Common moorhens	Nov. 10-Dec. 14
Georgia	
Moorhens, gallinules, and sea ducks	Nov. 13-Nov. 19 & Nov. 29-Dec. 10 & Jan. 31-Feb. 4
Maryland	
Mourning doves	Oct. 17-Nov. 11 & Dec. 12-Dec. 17 & Jan. 2- Jan. 6
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 1-Oct. 30 & Jan. 23-Mar. 10
Pennsylvania	
Mourning doves	Oct. 6-Oct. 16 & Nov. 22-Dec. 17

	Extended Falconry Dates
Pennsylvania (cont.)	
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Oct. 15 & Nov. 15-Dec. 16
Snipe	Sept. 1-Oct. 15 & Nov. 22-Dec. 17
Moorhens and gallinules	Nov. 10-Dec. 15
Virginia	
Doves	Sept. 26-Oct. 8 & Dec. 4-Dec. 27
Woodcock	Oct. 22-Oct. 29 & Nov. 14-Dec. 17 & Jan. 2-Jan. 31
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 22-Nov. 5 & Nov. 15-Dec. 16
Rails	Sept. 1-Sept. 10 & Nov. 20-Dec. 16
Woodcock	Sept. 1-Oct. 15 & Nov. 30-Dec. 16
Indiana	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 18-Sept. 30 & Nov. 15-Jan. 2
Ducks, mergansers, and coots (1)	
North Zone	Sept. 27-Sept. 30
Minnesota	
Woodcock	Sept. 1-Sept. 24 & Nov. 9-Dec. 16

	Extended Falconry Dates
Minnesota (cont.)	
Rails and snipe	Nov. 5-Dec. 16
Missouri	
Mourning and white-winged doves	Nov. 10-Dec. 16
Ducks, mergansers, and coots	Sept. 11-Sept. 19
Tennessee	
Mourning doves	Sept. 27-Oct. 8 & Oct. 25-Nov. 28
Ducks (1)	Sept. 16-Sept. 30
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 24
Woodcock	Sept. 1-Sept. 24
Ducks, mergansers, and coots	Sept. 18-Sept. 19
CENTRAL FLYWAY	
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 22-Sept. 30
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 11-Sept. 19 & Sept. 25-Sept. 26
Low Plains	Sept. 4-Sept. 26
New Mexico	
Doves	
North Zone	Oct. 31-Nov. 12 & Nov. 27-Dec. 30
South Zone	Oct. 1-Nov. 12 & Nov. 27-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Ducks and coots	Sept. 18-Sept. 26

	Extended Falconry Dates
New Mexico (cont.)	
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
Common moorhens	Dec. 25-Jan. 30
Sora and Virginia rails	Nov. 27-Jan. 2
North Dakota	
Ducks, mergansers, and coots	Sept. 6-Sept. 10 & Sept. 13-Sept. 17
Snipe	Sept. 1-Sept. 17
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 24
Middle Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 24
South Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 19-Dec. 25
Rails and gallinules	Dec. 23-Jan. 28
Woodcock	Nov. 24-Dec. 17 & Feb. 1-Mar. 9
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 22-Oct. 1
Zone 2	Sept. 15-Sept. 24
PACIFIC FLYWAY	
Arizona	
Doves	Deferred
Idaho	
Mourning doves	Nov. 1-Jan. 16
New Mexico	
Doves	
North Zone	Oct. 31-Nov. 12 & Nov. 27-Dec. 30
South Zone	Oct. 1-Nov. 12 & Nov. 27-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	Sept. 18

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 04–19896 Filed 8–31–04; 8:45 am]

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Federal Register

Wednesday,
September 1, 2004

Part VI

The President

Executive Order 13353—Establishing the President's Board on Safeguarding Americans' Civil Liberties

Executive Order 13354—National Counterterrorism Center

Executive Order 13355—Strengthened Management of the Intelligence Community

Executive Order 13356—Strengthening the Sharing of Terrorism Information To Protect Americans

Federal Register
Vol. 69, No. 169
Wednesday, September 1, 2004

Presidential Documents

Title 3—

The President

Executive Order 13353 of August 27, 2004

Establishing the President's Board on Safeguarding Americans' Civil Liberties

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further strengthen protections for the rights of Americans in the effective performance of national security and homeland security functions, it is hereby ordered as follows:

Section 1. *Policy.* The United States Government has a solemn obligation, and shall continue fully, to protect the legal rights of all Americans, including freedoms, civil liberties, and information privacy guaranteed by Federal law, in the effective performance of national security and homeland security functions.

Sec. 2. *Establishment of Board.* To advance the policy set forth in section 1 of this order (Policy), there is hereby established the President's Board on Safeguarding Americans' Civil Liberties (Board). The Board shall be part of the Department of Justice for administrative purposes.

Sec. 3. *Functions.* The Board shall:

(a) (i) advise the President on effective means to implement the Policy, and (ii) keep the President informed of the implementation of the Policy;

(b) periodically request reports from Federal departments and agencies relating to policies and procedures that ensure implementation of the Policy;

(c) recommend to the President policies, guidelines and other administrative actions, technologies, and legislation, as necessary to implement the Policy;

(d) at the request of the head of any Federal department or agency, unless the Chair, after consultation with the Vice Chair, declines the request, promptly review and provide advice on a policy or action of that department or agency that implicates the Policy;

(e) obtain information and advice relating to the Policy from representatives of entities or individuals outside the executive branch of the Federal Government in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation;

(f) refer, consistent with section 535 of title 28, United States Code, credible information pertaining to possible violations of law relating to the Policy by any Federal employee or official to the appropriate office for prompt investigation;

(g) take steps to enhance cooperation and coordination among Federal departments and agencies in the implementation of the Policy, including but not limited to working with the Director of the Office of Management and Budget and other officers of the United States to review and assist in the coordination of guidelines and policies concerning national security and homeland security efforts, such as information collection and sharing; and

(h) undertake other efforts to protect the legal rights of all Americans, including freedoms, civil liberties, and information privacy guaranteed by Federal law, as the President may direct.

Upon the recommendation of the Board, the Attorney General or the Secretary of Homeland Security may establish one or more committees that include

individuals from outside the executive branch of the Federal Government, in accordance with applicable law, to advise the Board on specific issues relating to the Policy. Any such committee shall carry out its functions separately from the Board.

Sec. 4. *Membership and Operation.* The Board shall consist exclusively of the following:

(a) the Deputy Attorney General, who shall serve as Chair;
(b) the Under Secretary for Border and Transportation Security, Department of Homeland Security, who shall serve as Vice Chair;
(c) the Assistant Attorney General (Civil Rights Division);
(d) the Assistant Attorney General (Office of Legal Policy);
(e) the Counsel for Intelligence Policy, Department of Justice;
(f) the Chair of the Privacy Council, Federal Bureau of Investigation;
(g) the Assistant Secretary for Information Analysis, Department of Homeland Security;
(h) the Assistant Secretary (Policy), Directorate of Border and Transportation Security, Department of Homeland Security;
(i) the Officer for Civil Rights and Civil Liberties, Department of Homeland Security;
(j) the Privacy Officer, Department of Homeland Security;
(k) the Under Secretary for Enforcement, Department of the Treasury;
(l) the Assistant Secretary (Terrorist Financing), Department of the Treasury;
(m) the General Counsel, Office of Management and Budget;
(n) the Deputy Director of Central Intelligence for Community Management;
(o) the General Counsel, Central Intelligence Agency;
(p) the General Counsel, National Security Agency;
(q) the Under Secretary of Defense for Intelligence;
(r) the General Counsel of the Department of Defense;
(s) the Legal Adviser, Department of State;
(t) the Director, Terrorist Threat Integration Center; and
(u) such other officers of the United States as the Deputy Attorney General may from time to time designate.

A member of the Board may designate, to perform the Board or Board subgroup functions of the member, any person who is part of such member's department or agency and who is either (i) an officer of the United States appointed by the President, or (ii) a member of the Senior Executive Service or the Senior Intelligence Service. The Chair, after consultation with the Vice Chair, shall convene and preside at meetings of the Board, determine its agenda, direct its work, and, as appropriate to deal with particular subject matters, establish and direct subgroups of the Board that shall consist exclusively of members of the Board. The Chair may invite, in his discretion, officers or employees of other departments or agencies to participate in the work of the Board. The Chair shall convene the first meeting of the Board within 20 days after the date of this order and shall thereafter convene meetings of the Board at such times as the Chair, after consultation with the Vice Chair, deems appropriate. The Deputy Attorney General shall designate an official of the Department of Justice to serve as the Executive Director of the Board.

Sec. 5. *Cooperation.* To the extent permitted by law, all Federal departments and agencies shall cooperate with the Board and provide the Board with such information, support, and assistance as the Board, through the Chair, may request.

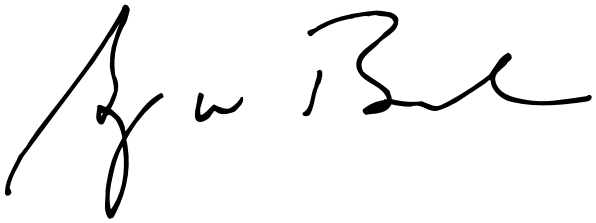
Sec. 6. *Administration.* Consistent with applicable law and subject to the availability of appropriations, the Department of Justice shall provide the funding and administrative support for the Board necessary to implement this order.

Sec. 7. *General Provisions.* (a) This order shall not be construed to impair or otherwise affect the authorities of any department, agency, instrumentality,

officer, or employee of the United States under applicable law, including the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable laws and Executive Orders concerning protection of information, including those for the protection of intelligence sources and methods, law enforcement information, and classified national security information, and the Privacy Act of 1974, as amended (5 U.S.C. 552a).

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, or any of its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 27, 2004.

[FR Doc. 04–20049
Filed 8–31–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13354 of August 27, 2004

National Counterterrorism Center

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 103(c)(8) of the National Security Act of 1947, as amended (Act), and to protect the security of the United States through strengthened intelligence analysis and strategic planning and intelligence support to operations to counter transnational terrorist threats against the territory, people, and interests of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) To the maximum extent consistent with applicable law, agencies shall give the highest priority to (i) the detection, prevention, disruption, preemption, and mitigation of the effects of transnational terrorist activities against the territory, people, and interests of the United States of America, (ii) the interchange of terrorism information among agencies, (iii) the interchange of terrorism information between agencies and appropriate authorities of States and local governments, and (iv) the protection of the ability of agencies to acquire additional such information.

(b) Agencies shall protect the freedom, information privacy, and other legal rights of Americans in the conduct of activities implementing section 1(a) of this order.

Sec. 2. *Establishment of National Counterterrorism Center.* (a) There is hereby established a National Counterterrorism Center (Center).

(b) A Director of the Center shall supervise the Center.

(c) The Director of the Center shall be appointed by the Director of Central Intelligence with the approval of the President.

(d) The Director of Central Intelligence shall have authority, direction, and control over the Center and the Director of the Center.

Sec. 3. *Functions of the Center.* The Center shall have the following functions:

(a) serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting purely domestic counterterrorism information. The Center may, consistent with applicable law, receive, retain, and disseminate information from any Federal, State, or local government, or other source necessary to fulfill its responsibilities concerning the policy set forth in section 1 of this order; and agencies authorized to conduct counterterrorism activities may query Center data for any information to assist in their respective responsibilities;

(b) conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies;

(c) assign operational responsibilities to lead agencies for counterterrorism activities that are consistent with applicable law and that support strategic plans to counter terrorism. The Center shall ensure that agencies have access to and receive intelligence needed to accomplish their assigned activities. The Center shall not direct the execution of operations. Agencies shall inform the National Security Council and the Homeland Security Council of any objections to designations and assignments made by the Center in the planning and coordination of counterterrorism activities;

(d) serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support; and

(e) ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis.

Sec. 4. *Duties of the Director of Central Intelligence.* The Director of Central Intelligence shall:

(a) exercise the authority available by law to the Director of Central Intelligence to implement this order, including, as appropriate, the authority set forth in section 102(e)(2)(H) of the Act;

(b) report to the President on the implementation of this order, within 120 days after the date of this order and thereafter not less often than annually, including an assessment by the Director of Central Intelligence of:

(1) the effectiveness of the United States in implementing the policy set forth in section 1 of this order, to the extent execution of that policy is within the responsibilities of the Director of Central Intelligence;

(2) the effectiveness of the Center in the implementation of the policy set forth in section 1 of this order, to the extent execution of that policy is within the responsibilities of the Director of Central Intelligence; and

(3) the cooperation of the heads of agencies in the implementation of this order; and

(c) ensure the performance of all-source intelligence analysis that, among other qualities, routinely considers and presents alternative analytical views to the President, the Vice President in the performance of executive functions, and other officials of the executive branch as appropriate.

Sec. 5. *Duties of the Director of the Center.* In implementing the policy set forth in section 1 of this order and ensuring that the Center effectively performs the functions set forth in section 3 of this order, the Director of the Center shall:

(a) access, as deemed necessary by the Director of the Center for the performance of the Center's functions, information to which the Director of the Center is granted access by section 6 of this order;

(b) correlate, analyze, evaluate, integrate, and produce reports on terrorism information;

(c) disseminate transnational terrorism information, including current terrorism threat analysis, to the President, the Vice President in the performance of Executive functions, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of Central Intelligence, and other officials of the executive branch as appropriate;

(d) support the Department of Homeland Security, and the Department of Justice, and other appropriate agencies, in fulfillment of their responsibility to disseminate terrorism information, consistent with applicable law, Executive Orders and other Presidential guidance, to State and local government officials, and other entities, and coordinate dissemination of terrorism information to foreign governments when approved by the Director of Central Intelligence;

(e) establish both within the Center, and between the Center and agencies, information systems and architectures for the effective access to and integration, dissemination, and use of terrorism information from whatever sources derived;

(f) undertake, as soon as the Director of Central Intelligence determines it to be practicable, all functions assigned to the Terrorist Threat Integration Center;

(g) consistent with priorities approved by the President, assist the Director of Central Intelligence in establishing requirements for the Intelligence Community for the collection of terrorism information, to include ensuring military force protection requirements are met;

(h) under the direction of the Director of Central Intelligence, and in consultation with heads of agencies with organizations in the Intelligence Community, identify, coordinate, and prioritize counterterrorism intelligence requirements for the Intelligence Community; and

(i) identify, together with relevant agencies, specific counterterrorism planning efforts to be initiated or accelerated to protect the national security.

Sec. 6. *Duties of the Heads of Agencies.* (a) To implement the policy set forth in section 1 of this order:

(i) the head of each agency that possesses or acquires terrorism information:

(A) shall promptly give access to such information to the Director of the Center, unless prohibited by law (such as section 103(c)(7) of the Act or Executive Order 12958, as amended) or otherwise directed by the President;

(B) shall cooperate in and facilitate the production of reports based on terrorism information with contents and formats that permit dissemination that maximizes the utility of the information in protecting the territory, people, and interests of the United States; and

(C) shall cooperate with the Director of Central Intelligence in the preparation of the report to the President required by section 4 of this order; and

(ii) the head of each agency that conducts diplomatic, financial, military, homeland security, intelligence, or law enforcement activities relating to counterterrorism shall keep the Director of the Center fully and currently informed of such activities, unless prohibited by law (such as section 103(c)(7) of the Act or Executive Order 12958, as amended) or otherwise directed by the President.

(b) The head of each agency shall, consistent with applicable law, make available to the Director of the Center such personnel, funding, and other resources as the Director of Central Intelligence, after consultation with the head of the agency and with the approval of the Director of the Office of Management and Budget, may request. In order to ensure maximum information sharing consistent with applicable law, each agency representative to the Center, unless otherwise specified by the Director of Central Intelligence, shall operate under the authorities of the representative's agency.

Sec. 7. *Definitions.* As used in this order:

(a) the term ''agency'' has the meaning set forth for the term ''executive agency'' in section 105 of title 5, United States Code, together with the Department of Homeland Security, but includes the Postal Rate Commission and the United States Postal Service and excludes the Government Accountability Office;

(b) the term ''Intelligence Community'' has the meaning set forth for that term in section 3.4(f) of Executive Order 12333 of December 4, 1981, as amended;

(c) the terms ''local government'', ''State'', and, when used in a geographical sense, ''United States'' have the meanings set forth for those terms in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101); and

(d) the term ''terrorism information'' means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other United States Government activities, relating to (i) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism; (ii) threats posed by such groups or individuals to the United States, United States persons, or United

States interests, or to those of other nations; (iii) communications of or by such groups or individuals; or (iv) information relating to groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

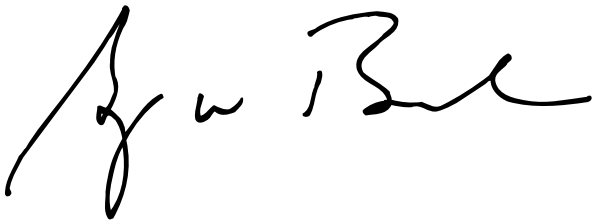
Sec. 8. *General Provisions.* (a) This order:

(i) shall be implemented in a manner consistent with applicable law, including Federal law protecting the information privacy and other legal rights of Americans, and subject to the availability of appropriations;

(ii) shall be implemented in a manner consistent with the authority of the principal officers of agencies as heads of their respective agencies, including under section 199 of the Revised Statutes (22 U.S.C. 2651), section 201 of the Department of Energy Reorganization Act (42 U.S.C. 7131), section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)), and sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code; and

(iii) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(b) This order and amendments made by this order are intended only to improve the internal management of the Federal Government and are not intended to, and do not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 27, 2004.

[FR Doc. 04–20050
Filed 8–31–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13355 of August 27, 2004

Strengthened Management of the Intelligence Community

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 103(c)(8) of the National Security Act of 1947, as amended (Act), and in order to further strengthen the effective conduct of United States intelligence activities and protect the territory, people, and interests of the United States of America, including against terrorist attacks, it is hereby ordered as follows:

Section 1. *Strengthening the Authority of the Director of Central Intelligence.* The Director of Central Intelligence (Director) shall perform the functions set forth in this order to ensure an enhanced joint, unified national intelligence effort to protect the national security of the United States. Such functions shall be in addition to those assigned to the Director by law, Executive Order, or Presidential directive.

Sec. 2. *Strengthened Role in National Intelligence.* Executive Order 12333 of December 4, 1981, as amended, is further amended as follows:

(a) Subsection 1.5(a) is amended to read:

''(a)(1) Act as the principal adviser to the President for intelligence matters related to the national security;

''(2) Act as the principal adviser to the National Security Council and Homeland Security Council for intelligence matters related to the national security; and

(b) Subsection 1.5(b) is amended to read:

''(b)(1) Develop such objectives and guidance for the Intelligence Community necessary, in the Director's judgment, to ensure timely and effective collection, processing, analysis, and dissemination of intelligence, of whatever nature and from whatever source derived, concerning current and potential threats to the security of the United States and its interests, and to ensure that the National Foreign Intelligence Program (NFIP) is structured adequately to achieve these requirements; and

''(2) Working with the Intelligence Community, ensure that United States intelligence collection activities are integrated in: (i) collecting against enduring and emerging national security intelligence issues; (ii) maximizing the value to the national security; and (iii) ensuring that all collected data is available to the maximum extent practicable for integration, analysis, and dissemination to those who can act on, add value to, or otherwise apply it to mission needs.''

(c) Subsection 1.5(g) is amended to read:

''(g)(1) Establish common security and access standards for managing and handling intelligence systems, information, and products, with special emphasis on facilitating:

''(A) the fullest and most prompt sharing of information practicable, assigning the highest priority to detecting, preventing, preempting, and disrupting terrorist threats against our homeland, our people, our allies, and our interests; and

''(B) the establishment of interface standards for an interoperable information sharing enterprise that facilitates the automated sharing of intelligence information among agencies within the Intelligence Community.

''(2) (A) Establish, operate, and direct national centers with respect to matters determined by the President for purposes of this subparagraph to be of the highest national security priority, with the functions of analysis and planning (including planning for diplomatic, financial, military, intelligence, homeland security, and law enforcement activities, and integration of such activities among departments and agencies) relating to such matters.

''(B) The countering of terrorism within the United States, or against citizens of the United States, our allies, and our interests abroad, is hereby determined to be a matter of the highest national security priority for purposes of subparagraph (2)(A) of this subsection.''

''(3) Ensure that appropriate agencies and departments have access to and receive all-source intelligence support needed to perform independent, alternative analysis.''

(d) Subsection 1.5(m) is amended to read:

''(m)(1) Establish policies, procedures, and mechanisms that translate intelligence objectives and priorities approved by the President into specific guidance for the Intelligence Community.

''(2) In accordance with objectives and priorities approved by the President, establish collection requirements for the Intelligence Community, determine collection priorities, manage collection tasking, and resolve conflicts in the tasking of national collection assets (except when otherwise directed by the President or when the Secretary of Defense exercises collection tasking authority under plans and arrangements approved by the Secretary of Defense and the Director) of the Intelligence Community.''

''(3) Provide advisory tasking concerning collection of intelligence information to elements of the United States Government that have information collection capabilities and are not organizations within the Intelligence Community.

''(4) The responsibilities in subsections 1.5(m)(2) and (3) apply, to the maximum extent consistent with applicable law, whether information is to be collected inside or outside the United States.''

(e) Subsection 1.6(a) is amended to read:

''(a) The heads of all departments and agencies shall:

''(1) Unless the Director provides otherwise, give the Director access to all foreign intelligence, counterintelligence, and national intelligence, as defined in the Act, that is relevant to transnational terrorist threats and weapons of mass destruction proliferation threats, including such relevant intelligence derived from activities of the FBI, DHS, and any other department or agency, and all other information that is related to the national security or that otherwise is required for the performance of the Director's duties, except such information that is prohibited by law, by the President, or by the Attorney General acting under this order at the direction of the President from being provided to the Director. The Attorney General shall agree to procedures with the Director pursuant to section 3(5)(B) of the Act no later than 90 days after the issuance of this order that ensure the Director receives all such information;

''(2) support the Director in developing the NFIP;

''(3) ensure that any intelligence and operational systems and architectures of their departments and agencies are consistent with national intelligence requirements set by the Director and all applicable information sharing and security guidelines, and information privacy requirements; and

''(4) provide, to the extent permitted by law, subject to the availability of appropriations, and not inconsistent with the mission of the department or agency, such further support to the Director as the Director may request, after consultation with the head of the department or agency, for the performance of the Director's functions.''

Sec. 3. *Strengthened Control of Intelligence Funding.* Executive Order 12333 is further amended as follows:

(a) Subsections 1.5(n), (o), and (p) are amended to read as follows:

''(n)(1) Develop, determine, and present with the advice of the heads of departments or agencies that have an organization within the Intelligence Community, the annual consolidated NFIP budget. The Director shall be responsible for developing an integrated and balanced national intelligence program that is directly responsive to the national security threats facing the United States. The Director shall submit such budget (accompanied by dissenting views, if any, of the head of a department or agency that has an organization within the Intelligence Community) to the President for approval; and

''(2) Participate in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program (JMIP) and the Tactical Intelligence and Related Activities (TIARA) Program.

''(o)(1) Transfer, consistent with applicable law and with the approval of the Director of the Office of Management and Budget, funds from an appropriation for the NFIP to another appropriation for the NFIP or to another NFIP component;

''(2) Review, and approve or disapprove, consistent with applicable law, any proposal to: (i) reprogram funds within an appropriation for the NFIP; (ii) transfer funds from an appropriation for the NFIP to an appropriation that is not for the NFIP within the Intelligence Community; or (iii) transfer funds from an appropriation that is not for the NFIP within the Intelligence Community to an appropriation for the NFIP; and

''(3) Monitor and consult with the Secretary of Defense on reprogrammings or transfers of funds within, into, or out of, appropriations for the JMIP and the TIARA Program.

''(p)(1) Monitor implementation and execution of the NFIP budget by the heads of departments or agencies that have an organization within the Intelligence Community, including, as necessary, by conducting program and performance audits and evaluations;

''(2) Monitor implementation of the JMIP and the TIARA Program and advise the Secretary of Defense thereon; and

''(3) After consultation with the heads of relevant departments, report periodically, and not less often than semiannually, to the President on the effectiveness of implementation of the NFIP Program by organizations within the Intelligence Community, for which purpose the heads of departments and agencies shall ensure that the Director has access to programmatic, execution, and other appropriate information.''

Sec. 4. *Strengthened Role in Selecting Heads of Intelligence Organizations.* With respect to a position that heads an organization within the Intelligence Community:

(a) if the appointment to that position is made by the head of the department or agency or a subordinate thereof, no individual shall be appointed to such position without the concurrence of the Director;

(b) if the appointment to that position is made by the President alone, any recommendation to the President to appoint an individual to that position shall be accompanied by the recommendation of the Director with respect to the proposed appointment; and

(c) if the appointment to that position is made by the President, by and with the advice and consent of the Senate, any recommendation to the President for nomination of an individual for that position shall be accompanied by the recommendation of the Director with respect to the proposed nomination.

Sec. 5. *Strengthened Control of Standards and Qualifications.* The Director shall issue, after coordination with the heads of departments and agencies

with an organization in the Intelligence Community, and not later than 120 days after the date of this order, and thereafter as appropriate, standards and qualifications for persons engaged in the performance of United States intelligence activities, including but not limited to:

(a) standards for training, education, and career development of personnel within organizations in the Intelligence Community, and for ensuring compatible personnel policies and an integrated professional development and education system across the Intelligence Community, including standards that encourage and facilitate service in multiple organizations within the Intelligence Community and make such rotated service a factor to be considered for promotion to senior positions;

(b) standards for attracting and retaining personnel who meet the requirements for effective conduct of intelligence activities;

(c) standards for common personnel security policies among organizations within the Intelligence Community; and

(d) qualifications for assignment of personnel to centers established under section 1.5(g)(2) of Executive Order 12333, as amended by section 2 of this order.

Sec. 6. *Technical Corrections.* Executive Order 12333 is further amended as follows:

(a) The preamble is amended by, after ''amended'', inserting ''(Act)''.

(b) Subsection 1.3(a)(4) is amended by, after ''governments'', inserting ''and organizations''.

(c) Subsection 1.4(a) is amended by, after ''needed by the President'', inserting ''and, in the performance of Executive functions, the Vice President,''.

(d) Subsection 1.7(c) is amended by striking ''the Director of Central Intelligence and'' and by striking ''their respective'' and inserting ''its''.

(e) Subsection 1.8(c) is amended by, after ''agreed upon'', inserting ''by''.

(f) Subsection 1.8(i) is amended by striking ''and through'' and inserting in lieu thereof ''through''.

(g) Subsection 1.10 is amended by:

(i) striking ''*The Department of the Treasury.* The Secretary of the Treasury shall:'' and inserting in lieu thereof ''*The Department of the Treasury and the Department of Homeland Security.* The Secretary of the Treasury, with respect to subsections (a), (b), and (c), and the Secretary of Homeland Security with respect to subsection (d), shall:'';

(ii) in subparagraph (d), after ''used against the President'' inserting ''or the Vice President''; and

(iii) in subparagraph (d), striking ''the Secretary of the Treasury'' both places it appears and inserting in lieu thereof in both places ''the Secretary of Homeland Security''.

(h) Subsection 2.4(c)(1) is amended by striking ''present of former'' and inserting in lieu thereof ''present or former''.

(i) Subsection 3.1 is amended by:

(i) striking ''as provided in title 50, United States Code, section 413'' and inserting in lieu thereof ''implemented in accordance with applicable law, including title V of the Act''; and

(ii) striking ''section 662 of the Foreign Assistance Act of 1961 as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413),'' and inserting in lieu thereof ''applicable law, including title V of the Act,''.

(j) Subsection 3.4(b) is amended by striking ''visably'' and inserting in lieu thereof ''visibly''.

(k) Subsection 3.4(f) is amended:

(i) after ''*agencies within the Intelligence Community*'', by inserting ''*, or organizations within the Intelligence Community*'';

(ii) in paragraph (8), by striking ''Those'' and inserting in lieu thereof ''The intelligence elements of the Coast Guard and those''; and

(iii) by striking the ''and'' at the end of paragraph (7), striking the period at the end of paragraph (8) and inserting in lieu thereof ''; and'', and adding at the end thereof ''(9) National Geospatial-Intelligence Agency''.

Sec. 7. *General Provisions.*

(a) This order and the amendments made by this order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall be implemented in a manner consistent with the authority of the principal officers of the executive departments as heads of their respective departments, including under section 199 of the Revised Statutes (22 U.S.C. 2651), section 201 of the Department of Energy Reorganization Act (42 U.S.C. 7131), section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)), and sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code; and

(iii) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

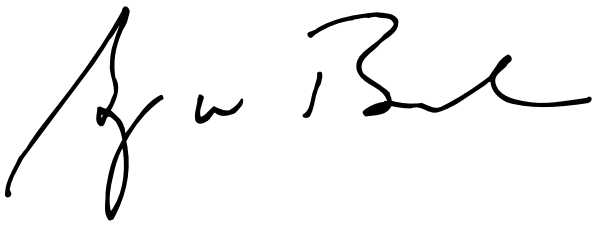
(b) Nothing in section 4 of this order limits or otherwise affects—

(i) the appointment of an individual to a position made before the date of this order; or

(ii) the power of the President as an appointing authority to terminate an appointment.

(c) Nothing in this order shall be construed to impair or otherwise affect any authority to provide intelligence to the President, the Vice President in the performance of Executive functions, and other officials in the executive branch.

(d) This order and amendments made by this order are intended only to improve the internal management of the Federal Government and are not intended to, and do not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 27, 2004.

[FR Doc. 04–20051
Filed 8–31–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13356 of August 27, 2004

Strengthening the Sharing of Terrorism Information To Protect Americans

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to further strengthen the effective conduct of United States intelligence activities and protect the territory, people, and interests of the United States of America, including against terrorist attacks, it is hereby ordered as follows:

Section 1. *Policy.* To the maximum extent consistent with applicable law, agencies shall, in the design and use of information systems and in the dissemination of information among agencies:

(a) give the highest priority to (i) the detection, prevention, disruption, preemption, and mitigation of the effects of terrorist activities against the territory, people, and interests of the United States of America, (ii) the interchange of terrorism information among agencies, (iii) the interchange of terrorism information between agencies and appropriate authorities of States and local governments, and (iv) the protection of the ability of agencies to acquire additional such information; and

(b) protect the freedom, information privacy, and other legal rights of Americans in the conduct of activities implementing subsection (a).

Sec. 2. *Duty of Heads of Agencies Possessing or Acquiring Terrorism Information.* To implement the policy set forth in section 1 of this order, the head of each agency that possesses or acquires terrorism information:

(a) shall promptly give access to the terrorism information to the head of each other agency that has counterterrorism functions, and provide the terrorism information to each such agency in accordance with the standards and information sharing guidance issued pursuant to this order, unless otherwise directed by the President, and consistent with (i) the statutory responsibilities of the agencies providing and receiving the information, (ii) any guidance issued by the Attorney General to fulfill the policy set forth in subsection 1(b) of this order, and (iii) other applicable law, including section 103(c)(7) of the National Security Act of 1947, section 892 of the Homeland Security Act of 2002, Executive Order 12958 of April 17, 1995, as amended, and Executive Order 13311 of July 29, 2003;

(b) shall cooperate in and facilitate production of reports based on terrorism information with contents and formats that permit dissemination that maximizes the utility of the information in protecting the territory, people, and interests of the United States; and

(c) shall facilitate implementation of the plan developed by the Information Systems Council established by section 5 of this order.

Sec. 3. *Preparing Terrorism Information for Maximum Distribution within Intelligence Community.* To assist in expeditious and effective implementation by agencies within the Intelligence Community of the policy set forth in section 1 of this order, the Director of Central Intelligence shall, in consultation with the Attorney General and the other heads of agencies within the Intelligence Community, set forth not later than 90 days after the date of this order, and thereafter as appropriate, common standards for the sharing of terrorism information by agencies within the Intelligence Community with (i) other agencies within the Intelligence Community, (ii) other agencies having counterterrorism functions, and (iii) through or in

coordination with the Department of Homeland Security, appropriate authorities of State and local governments. These common standards shall improve information sharing by such methods as:

(a) requiring, at the outset of the intelligence collection and analysis process, the creation of records and reporting, for both raw and processed information including, for example, metadata and content, in such a manner that sources and methods are protected so that the information can be distributed at lower classification levels, and by creating unclassified versions for distribution whenever possible;

(b) requiring records and reports related to terrorism information to be produced with multiple versions at an unclassified level and at varying levels of classification, for example on an electronic tearline basis, allowing varying degrees of access by other agencies and personnel commensurate with their particular security clearance levels and special access approvals;

(c) requiring terrorism information to be shared free of originator controls, including, for example, controls requiring the consent of the originating agency prior to the dissemination of the information outside any other agency to which it has been made available, to the maximum extent permitted by applicable law, Executive Orders, or Presidential guidance;

(d) minimizing the applicability of information compartmentalization systems to terrorism information, to the maximum extent permitted by applicable law, Executive Orders, and Presidential guidance; and

(e) ensuring the establishment of appropriate arrangements providing incentives for, and holding personnel accountable for, increased sharing of terrorism information, consistent with requirements of the Nation's security and with applicable law, Executive Orders, and Presidential guidance.

Sec. 4. *Requirements for Collection of Terrorism Information Inside the United States.* (a) The Attorney General, the Secretary of Homeland Security, and the Director of Central Intelligence shall, not later than 90 days after the date of this order, jointly submit to the President, through the Assistants to the President for National Security Affairs and Homeland Security, their recommendation on the establishment of executive branch-wide collection and sharing requirements, procedures, and guidelines for terrorism information to be collected within the United States, including, but not limited to, from publicly available sources, including nongovernmental databases.

(b) The recommendation submitted under subsection (a) of this section shall also:

(i) address requirements and guidelines for the collection and sharing of other information necessary to protect the territory, people, and interests of the United States; and

(ii) propose arrangements for ensuring that officers of the United States with responsibilities for protecting the territory, people, and interests of the United States are provided with clear, understandable, consistent, effective, and lawful procedures and guidelines for the collection, handling, distribution, and retention of information.

Sec. 5. *Establishment of Information Systems Council.* (a) There is established an Information Systems Council (Council), chaired by a designee of the Director of the Office of Management and Budget, and composed exclusively of designees of: the Secretaries of State, the Treasury, Defense, Commerce, Energy, and Homeland Security; the Attorney General; the Director of Central Intelligence; the Director of the Federal Bureau of Investigation; the Director of the National Counterterrorism Center, once that position is created and filled (and until that time the Director of the Terrorism Threat Integration Center); and such other heads of departments or agencies as the Director of the Office of Management and Budget may designate.

(b) The mission of the Council is to plan for and oversee the establishment of an interoperable terrorism information sharing environment to facilitate automated sharing of terrorism information among appropriate agencies to implement the policy set forth in section 1 of this order.

(c) Not later than 120 days after the date of this order, the Council shall report to the President through the Assistants to the President for National Security Affairs and Homeland Security, on a plan, with proposed milestones, timetables for achieving those milestones, and identification of resources, for the establishment of the proposed interoperable terrorism information sharing environment. The plan shall, at a minimum:

(i) describe and define the parameters of the proposed interoperable terrorism information sharing environment, including functions, capabilities, and resources;

(ii) identify and, as appropriate, recommend the consolidation and elimination of current programs, systems, and processes used by agencies to share terrorism information, and recommend as appropriate the redirection of existing resources to support the interoperable terrorism information sharing environment;

(iii) identify gaps, if any, between existing technologies, programs, and systems used by agencies to share terrorism information and the parameters of the proposed interoperable terrorism information sharing environment;

(iv) recommend near-term solutions to address any such gaps until the interoperable terrorism information sharing environment can be established;

(v) recommend a plan for implementation of the interoperable terrorism information sharing environment, including roles and responsibilities, measures of success, and deadlines for the development and implementation of functions and capabilities from the initial stage to full operational capability;

(vi) recommend how the proposed interoperable terrorism information sharing environment can be extended to allow interchange of terrorism information between agencies and appropriate authorities of States and local governments; and

(vii) recommend whether and how the interoperable terrorism information sharing environment should be expanded, or designed so as to allow future expansion, for purposes of encompassing other categories of intelligence and information.

Sec. 6. *Definitions.* As used in this order:

(a) the term ''agency'' has the meaning set forth for the term ''executive agency'' in section 105 of title 5, United States Code, together with the Department of Homeland Security, but includes the Postal Rate Commission and the United States Postal Service and excludes the Government Accountability Office;

(b) the terms ''Intelligence Community'' and ''agency within the Intelligence Community'' have the meanings set forth for those terms in section 3.4(f) of Executive Order 12333 of December 4, 1981, as amended;

(c) the terms ''local government,'' ''State,'' and, when used in a geographical sense, ''United States,'' have the meanings set forth for those terms in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101); and

(d) the term ''terrorism information'' means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other United States Government activities, relating to (i) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism; (ii) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations; (iii) communications of or by such groups or individuals; or (iv) information relating to groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

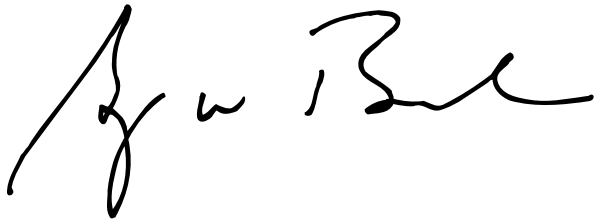
Sec. 7. *General Provisions.* (a) This order:

(i) shall be implemented in a manner consistent with applicable law, including Federal law protecting the information privacy and other legal rights of Americans, and subject to the availability of appropriations;

(ii) shall be implemented in a manner consistent with the authority of the principal officers of agencies as heads of their respective agencies, including under section 199 of the Revised Statutes (22 U.S.C. 2651), section 201 of the Department of Energy Reorganization Act (42 U.S.C. 7131), section 102(a) of the National Security Act of 1947 (50 U.S.C. 403(a)), section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)), and sections 301 of title 5, 113(b) and 162(b) of title 10, 1501 of title 15, 503 of title 28, and 301(b) of title 31, United States Code; and

(iii) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(b) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 27, 2004.

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Federal Register

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2004

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A new table will be published in the first issue of each month.

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Sept 22	Oct 7	Oct 22	Nov 8	Nov 22	Dec 21
Sept 23	Oct 8	Oct 25	Nov 8	Nov 22	Dec 22
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Sept 27	Oct 12	Oct 27	Nov 12	Nov 26	Dec 27
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