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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 00-073-2]

RIN 0579-AB76

#### Pine Shoot Beetle Host Material From Canada

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are establishing restrictions on the importation of pine shoot beetle host material into the United States from Canada. Under the new regulations, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain requirements relating to documentation, treatment, handling, and utilization as a condition of importation into the United States from Canada. This action is necessary on an emergency basis to help prevent the introduction and spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**DATES:** This interim rule is effective October 20, 2004. We will consider all comments that we receive on or before December 20, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> 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 you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 00-073-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 00-073-2.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00-073-2" on the subject line.

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**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Thomas, Import Specialist, PPQ, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737-1236; (301) 734-8367.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 (foreign quarantine notices) prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37-14 and referred to below as the

nursery stock regulations) covers the importation of living plants, plant parts, and seeds for propagation. "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40-1 through 319.40-11 and referred to below as the wood regulations) covers the importation of logs, lumber, and other wood articles that are unprocessed or have received only primary processing. "Subpart—Gypsy Moth Host Material from Canada" (§§ 319.77-1 through 319.77-5 and referred to below as the gypsy moth regulations) covers the importation of gypsy moth host material into the United States from Canada. This material includes certain trees and shrubs, logs and pulpwood with bark attached, and outdoor household articles and mobile homes and their associated equipment.

##### Pine Shoot Beetle

Pine shoot beetle (*Tomicus piniperda*) is a pest of pine trees. It can cause damage in weak and dying trees, where reproductive and immature stages of pine shoot beetle (PSB) occur, and in the new growth of healthy trees. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually in the current year's growth), causing stunted and distorted growth in host trees. PSB also acts as a vector of several diseases of pine trees. Adult PSB can fly at least 1 kilometer. In addition, infested trees and pine products are often transported long distances, which can result in the establishment of PSB populations far from the location of the original host tree. PSB can damage urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB host material encompasses all varieties of *Pinus* species (*Pinus* spp.) and has been detected in the North Central, Northeastern, and Middle Atlantic regions of the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Picea* spp.), and larch (*Larix* spp.) are not hosts of PSB.

PSB was first detected in Canada approximately 10 years ago. Areas of known infestation are located in the Provinces of Ontario and Quebec, and are contiguous, for the most part, with

areas infested with PSB in the northeastern United States. PSB populations have continued to spread in Ontario and Quebec despite the efforts of Canada's plant protection service, the Canadian Food Inspection Agency (CFIA), in implementing regulatory compliance practices to control the spread of the plant pest.

Under the Plant Protection Act (7 U.S.C. 7701-7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation and entry into the United States of any plants and plant products, including pine materials and products, to prevent the introduction of plant pests or noxious weeds into the United States.

APHIS already regulates the interstate movement of PSB host material from areas in the United States that are considered to be infested with PSB through its domestic quarantine notices. (See Subpart "Pine Shoot Beetle," 7 CFR 301.50 through 301.50-10 and referred to below as the domestic PSB regulations). A list of quarantined areas in the United States (*i.e.*, counties where PSB has been detected) can be found at § 301.50-3 of the domestic PSB regulations.

In this document, we are establishing specific requirements for the importation of PSB host material into the United States from Canada. To accomplish this, we are amending the nursery stock, wood, and gypsy moth regulations.

The requirements in this interim rule parallel in many respects regulations that the Canadian Government has implemented with respect to the importation of PSB host material into Canada from the United States. The reciprocal regulation of imported PSB host material by Canada and the United States is consistent with North American Plant Protection Organization standards for preventing the introduction and spread of quarantine plant pests and fostering the preservation of plant resources in North America through coordinated joint programs of mutual interest.

#### *Changes to the Nursery Stock Regulations*

The nursery stock regulations provide that any restricted article offered for importation into the United States, other than certain greenhouse-grown plants from Canada, must be accompanied by a phytosanitary certificate of inspection. Restricted articles include any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding prohibited articles listed in § 319.37-2

and other articles subject to specific regulations elsewhere in part 319.

#### **Permits**

Section 319.37-3 of the nursery stock regulations lists certain restricted articles for which a written permit must be issued by APHIS' Plant Protection and Quarantine Programs as a condition of entry into the United States. One of the restricted articles for which a written permit is required is articles (except seeds) of *Pinus* spp. from Canada and destined to California, Idaho, Montana, Oregon, or Utah (see § 319.37-3(a)(15)).

In this interim rule, we are amending § 319.37-3(a)(15) to provide that a written permit must now be obtained for the importation of all restricted articles (except seeds) of pine (*Pinus* spp.) from Canada, regardless of their destination in the United States. We are making this change to better monitor the movement of pine nursery stock from Canada into the United States, and thereby help prevent the introduction and spread of PSB into noninfested areas of the United States.

#### *Special Foreign Inspection and Certification Requirements*

Section 319.37-5 of the nursery stock regulations sets forth additional requirements for foreign inspection and certification of specified restricted articles prior to their importation into the United States. For example, in some cases we require that the phytosanitary certificate of inspection accompanying certain restricted articles provide further information on the article in the form of an additional declaration.

To further mitigate the risk of PSB spreading into noninfested areas of the United States, we are adding a new paragraph to § 319.37-5 that sets out foreign inspection and certification requirements for the importation of restricted articles of pine (*Pinus* spp.) into the United States from Canada. These requirements are based primarily on whether the restricted article originated in an infested or partially infested Province in Canada and whether the restricted article is destined for or will be moved through areas in the United States that are quarantined for PSB. This new paragraph appears at § 319.37-5(s).

#### *From Noninfested Canadian Provinces to All Areas of the United States*

Under new § 319.37-5(s), restricted articles of pine (*Pinus* spp.) from Canada may be imported into any area of the United States as long as the articles originated in and have only been moved through Canadian

Provinces that are not considered by the CFIA to be infested or partially infested with PSB. The phytosanitary certificate of inspection accompanying these restricted articles must specify the Province where the articles originated and, if applicable, the Province or Provinces the restricted articles were moved through, if different from the Province of origin. We need this origin information to ensure that the restricted article was not grown in or moved through a Canadian Province considered to be infested or partially infested with PSB, as determined by the CFIA.

We are relying on the CFIA to identify Provinces and those specific areas (*i.e.*, counties and municipal regional counties) within Provinces considered to be infested with PSB. CFIA considers a Province to be infested if PSB has been detected in all counties or municipal regional counties within that Province. CFIA considers a Province to be partially infested if PSB has been detected in one or more (but not all) counties or municipal regional counties in a Province. At this time, portions of two Provinces, Ontario and Quebec, are infested with PSB.

This interim rule also requires that the U.S. destination (including county and State) of the restricted articles be plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container.

If the restricted articles are to be moved through a U.S. quarantined area for PSB en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the restricted articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB. These movement restrictions governing the U.S. movement of PSB host materials from Canada parallel existing restrictions for the interstate movement of PSB host materials under the domestic PSB regulations.

#### *From Infested or Partially Infested Canadian Provinces to U.S. Infested Areas*

Restricted articles of pine (*Pinus* spp.) that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and that are destined for and will be moved only through areas in the United States that are quarantined for PSB under the domestic PSB regulations must meet the following requirements to be imported into the United States:

- The accompanying phytosanitary certificate of inspection must specify the Canadian Province where the restricted articles originated, and, if applicable, the Province or Provinces the restricted articles were moved through, if different from the Province of origin; and

- The U.S. destination (including State and county) of the restricted articles must be plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container.

We require this information on the restricted article's origin and destination to verify that it originated from a Province that is considered to be infested or partially infested with PSB, and to confirm that the article is not destined for and will not be moved through a noninfested area in the United States.

#### *From Infested or Partially Infested Canadian Provinces to or Through U.S. Noninfested Areas*

If restricted articles of pine (*Pinus* spp.) originated in a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not considered to be infested with PSB under the PSB regulations, then the articles must meet the following requirements to be imported into the United States:

- The accompanying phytosanitary certificate of inspection must specify the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces the restricted articles were moved through, if different from the Province of origin. The treatment section of the phytosanitary certificate of inspection must indicate that the restricted articles have been treated with methyl bromide to kill PSB in accordance with applicable provisions of the Plant Protection and Quarantine Treatment Manual (the Treatment Manual); or alternatively, in lieu of methyl bromide treatment, the phytosanitary certificate of inspection must contain one of the following additional declarations:

- "These restricted articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*);" or

- "These restricted articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA." Such an area would be a county

or regional municipal county within a partially infested Province of Canada that is not on the CFIA list of areas considered to be infested with PSB; or

- "These restricted articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*)." By 100 percent inspection, we mean that each article in the shipment, and not just a representative sample of articles in that shipment, is visually examined. One hundred percent inspection provides a greater degree of assurance that pests are not present and that the shipment is otherwise in compliance with phytosanitary requirements; or

- "Based on inspection, the restricted articles are no greater than 36 inches high with a bole diameter at soil level of 1 inch or less." PSB is not known to infest plants of this size.

We are providing methyl bromide as a treatment option here and elsewhere in this rule primarily because it is provided as a treatment option in Canadian regulations covering the importation of PSB host material from the United States, as well as in our domestic PSB regulations at § 301.50–10.

In addition to the phytosanitary certificate of inspection, we are also requiring that the U.S. destination (including State and county) of the restricted articles be plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container.

If the restricted articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the restricted articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB. These movement restrictions within the United States parallel existing PSB movement controls governing the interstate movement of PSB host material under our domestic quarantine notices.

#### *Changes to the Wood Regulations*

The wood regulations prohibit or restrict the importation of logs, lumber, and other wood articles that are unprocessed or have received only primary processing. Regulated articles include PSB host material such as pine logs, lumber with bark attached, cut pine Christmas trees, wood chips, wood mulch, and composted bark.

#### *Definitions*

As is discussed in greater detail below, we are now requiring that the importation of regulated articles of pine (*Pinus* spp.) from Canada that are not completely free of bark must be accompanied by a certificate or a statement of origin and movement. The wood regulations define a certificate as "a certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under subpart 319.40." The term "certificate," as used in subpart 319.40, is similar in meaning to the term "phytosanitary certificate of inspection" that appears in the nursery stock regulations.

In this interim rule, we are defining the term "statement of origin and movement" in § 319.40–1 as "a signed, accurate statement certifying the area or areas where the regulated articles originated and, if applicable, the area or areas they were moved through prior to importation. The statement may be printed directly on the documentation accompanying the shipment of regulated articles, or it may be provided on a separate document. The statement does not require the signature of a public officer of a national plant protection organization; exporters may sign the document." The principal distinction between a statement of origin and movement and a certificate is that a statement of origin and movement does not require that the regulated article be inspected for plant pests or signed by an officer of a national plant protection organization.

#### *General Permits*

Generally, the wood regulations require that a specific written permit be issued for the importation of any regulated article. However, under § 319.40–3, APHIS authorizes the importation of certain regulated articles into the United States pursuant to a general permit. If covered by a general permit, the importer does not have to apply for a separate written permit from APHIS. As stated in § 319.40–3, regulated articles imported into the United States under a general permit are subject to inspection at the port of first

arrival and other requirements in § 319.40–9.

Under § 319.40–3(a), APHIS has issued a general permit for the importation into the United States of most regulated articles from Canada and from States in Mexico that are adjacent to the United States border. Regulated articles covered by the general permit must be accompanied by an importer document stating that the articles are derived from trees that were harvested in, and have never been moved outside, areas covered by the general permit (i.e., Canada or States of Mexico adjacent to the United States border). As stated in § 319.40–3(a), the general permit does not apply to regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae. Shippers wishing to import these particular articles into the United States must apply for a specific written permit as provided in §§ 319.40–2 and 319.40–4 of the regulations.

In this interim rule, we are amending § 319.40–3(a) to provide that the general permit will also no longer apply to regulated articles of pine (*Pinus* spp.) that are not completely free of bark from Provinces in Canada considered to be infested or partially infested with PSB, as determined by the CFIA. Instead, these particular regulated articles must have a written permit because of the risk of PSB associated with these articles.

#### *Importation and Entry Requirements for Specified Articles*

Section 319.40–5 of the wood regulations contains additional conditions for the importation and entry of specified regulated articles from particular regions or climatic zones around the world. These additional requirements provide, in general, that regulated articles be treated or meet certain other conditions designed to mitigate potential plant pest risks.

We are amending § 319.40–5 to add a new paragraph that contains specific requirements for the importation from Canada of regulated articles of pine (*Pinus* spp.) that are not completely free of bark. These requirements are necessary to prevent the introduction of PSB into noninfested areas of the United States. We are providing one set of requirements for the importation of cut pine Christmas trees and another set of requirements for the importation of other pine articles that consist of pine bark or have pine bark attached.

#### *Pine Christmas Trees (Cut)*

Cut pine Christmas trees from Canada, in addition to meeting other applicable requirements of the wood regulations,

may be imported into the United States only if the following conditions are met.

#### *From Noninfested Canadian Provinces to All Areas of the United States*

Cut pine Christmas trees that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with PSB, as determined by the CFIA, may be imported into any area of the United States only if:

- The cut pine Christmas trees are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated in and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved only through areas of Canada that are not considered to be infested with PSB, as determined by the CFIA.
- The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container.
- If the cut pine Christmas trees are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB.

#### *From Infested or Partially Infested Canadian Provinces to U.S. Infested Areas*

Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and are destined for and will be moved only through areas in the United States quarantined for PSB under the domestic PSB regulations may be imported into the United States only if:

- They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved through one or more Canadian Provinces considered to be infested or partially infested with PSB; and

- The U.S. destination (including State and county) is plainly indicated on the cut pine Christmas trees or, if applicable, on the outer covering or container.

#### *From Infested or Partially Infested Canadian Provinces to or Through U.S. Noninfested Areas*

Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with PSB, as determined by the CFIA, and are destined for or will be moved through any area in the United States that is not quarantined for PSB under the domestic PSB regulations may be imported into the United States if:

- They are accompanied by a certificate that specifies the Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and indicates in the treatment section of the certificate that the cut pine Christmas trees have been treated with methyl bromide to kill PSB, or, alternatively, in lieu of methyl bromide treatment, the certificate contains one of the following additional declarations:
  - “These regulated articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*)”; or
  - “These regulated articles were produced in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA”; or
  - “These regulated articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*).”
- The U.S. destination (including State and county) is plainly indicated on the cut pine Christmas trees or, if applicable, on the outer covering or container.

If the cut pine Christmas trees are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB.

### Other Pine Articles

Regulated articles of pine (*Pinus* spp.) from Canada other than cut pine Christmas trees that consist of pine bark, including, but not limited to, chips, nuggets, mulch, and compost, as well as pine products with pine bark attached, including, but not limited to, logs, lumber, pulpwood, stumps, and raw pine materials for wreaths and garlands (pine articles), in addition to meeting other applicable requirements of the wood regulations, may be imported into the United States only if the following conditions are met.

#### *From Noninfested Canadian Provinces to All Areas of the United States*

Pine articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with PSB, as determined by the CFIA, may be imported into any area of the United States only if the articles are accompanied by a statement of origin and movement that specifies the Province where the articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the articles originated in and were moved only through Provinces of Canada not considered to be infested or partially infested with PSB. We are requiring the statement of origin and movement as assurance that the pine articles originated in and were moved only through noninfested areas of Canada.

In addition to the statement of origin and movement, the U.S. destination (including county and State) must be plainly indicated on the pine articles or, if applicable, on the outer covering, packaging, or container.

Also, if the pine articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the pine articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by PSB.

#### *From Canadian Infested Provinces or Partially Infested Provinces to U.S. Infested Areas*

Pine articles that originated in or were moved through a Province considered to be infested or partially infested with PSB, as determined by the CFIA, and that are destined for and will be moved

only through areas in the United States that are quarantined for PSB under the domestic PSB regulations may be imported into the United States only if:

- The pine articles are accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin, and also states that the pine articles originated from and were moved through one or more Provinces of Canada that are considered to be infested or partially infested with PSB; and
- The U.S. destination (including county and State) is plainly indicated on the pine articles or, if applicable, on the outer covering, packaging, or container.

#### *From Noninfested Areas in Partially Infested Canadian Provinces to or through U.S. Noninfested Areas*

Pine products that originated in a noninfested county or municipal regional county of a partially infested Province, as determined by the CFIA, and were moved through Canadian noninfested areas only, and are destined for or will be moved through any area in the United States that is not quarantined for PSB under the domestic PSB regulations, may be imported into the United States only if one of the following sets of conditions is met:

- The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The certificate also must contain the following additional declaration: "These regulated articles originated in and were moved only through areas where pine shoot beetle (*Tomicus piniperda*) is not present, as determined by the CFIA." In addition, the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or
- The pine products are consigned to a designated U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the articles. The name and address of the U.S. facility (including county and State) receiving the regulated articles

must be plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container.

If the regulated articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB during the period of January through September when the temperature is higher than 10 °C (50 °F), then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

#### *From Canadian Infested Provinces or Infested Areas of Partially Infested Provinces to or Through U.S. Noninfested Areas*

Pine products that originated in or were moved through either a Canadian Province considered to be infested with PSB or an infested area of a partially infested Province, as determined by the CFIA, and are destined for or will be moved through any area in the United States not quarantined for PSB under the domestic PSB regulations, may be imported into the United States only if one of the following sets of conditions is met:

- The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated with methyl bromide to kill the pine shoot beetle (*Tomicus piniperda*) in accordance with 7 CFR 319.40–7(f). In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or
- The regulated articles, consisting of pine bark, are accompanied by a certificate that specifies both the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The additional declaration section must state, "The pine bark in this shipment has been ground into pieces less than or equal to 1 inch in

diameter.” In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, in the outer covering, packaging, or container; or

- The pine products are shipped from a CFIA-approved facility that processes only regulated articles that originated in areas in Canada or the United States not considered to be infested with pine shoot beetle. The facility must be inspected by the CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures, and the CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the articles, as well as the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or

- The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated in accordance with § 319.40–6, which provides for heat treatment or heat treatment with moisture reduction. In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; or

- The pine products, consisting of logs with bark attached, are consigned to a U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the regulated articles. The logs must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. facility. The logs must be accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the logs originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. In addition, the name and address (including county and State) of the U.S. facility receiving the logs must be

plainly indicated on the regulated articles or, if applicable, on the outer covering or container; or

- The pine products, consisting of pine bark, are shipped from a CFIA-approved facility for use as a fuel at a cogeneration facility in the United States approved by APHIS. The pine bark must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. cogeneration facility. The Canadian facility from which the pine bark is shipped must be inspected by the CFIA at least twice a year to verify that the facility is following handling and processing procedures that adequately safeguard the pine bark for shipment to the U.S. cogeneration facility. The CFIA must also provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the pine bark, as well as the name and address of the U.S. cogeneration facility receiving the shipment (including county and State) must be plainly indicated on the outer covering, packaging, or container of the pine bark.

If the regulated articles are to be moved through an area of the United States quarantined for PSB under the domestic PSB regulations en route to an area or areas in the United States not quarantined for PSB, during the period of January through September when the temperature is higher than 10 °C (50 °F), then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

#### Other Changes

In § 319.37–1, we are amending the definition of restricted article by removing the phrase “excluding any articles subject to any restricted entry orders in 7 CFR part 321 (*i.e.*, potatoes).” Part 321, which contained prohibitions concerning the importation into the United States of potato tubers from Bermuda, parts of Canada, and all other parts of the world, was removed in a rule published in the **Federal Register** on September 25, 1997 (62 FR 50237–50239, Docket No. 97–010–2). The prohibitions concerning potato tubers now appear in the nursery stock regulations. We are also making several other nonsubstantive changes to the definition of restricted article by updating cross references to other sections in part 319.

Section 319.40–2 of the wood regulations contains general

requirements for the importation of regulated articles. Section 319.40–2 also references the gypsy moth regulations, noting that logs and pulpwood with bark attached that are imported from Canada are subject to the inspection and certification requirements in § 319.77–4 of the gypsy moth regulations. We are making a technical change to § 319.40–2(f) to clarify that, in addition to logs and pulpwood, cut trees (*e.g.*, Christmas trees) are also specifically covered by the inspection and certification requirements in § 319.77–4 of the gypsy moth regulations.

Section 319.77–4 of the gypsy moth regulations sets out the conditions for the importation of trees and shrubs, logs and pulpwood with bark attached, and outdoor household articles and mobile homes and their associated equipment into the United States from Canada. A footnote to § 319.77–4(a) notes that trees and shrubs from Canada that are capable of propagation may be subject to additional restrictions under the nursery stock regulations. We are amending this footnote by noting that regulated articles subject to the gypsy moth regulations may also be subject to additional restrictions under the wood regulations.

We are making other nonsubstantive changes to the nursery stock, wood, and gypsy moth regulations to update cross references.

#### Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of PSB into noninfested areas of the United States from PSB host material imported from Canada. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see DATES* above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

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

Below is a summary of the economic analysis for the interim rule to establish restrictions on the importation of pine shoot beetle host material into the United States from Canada. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at <http://www.aphis.usda.gov/ppd/rad/00-073-2PSBeconanal.doc>.

We do not have enough data for a comprehensive analysis of the economic effects of this interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this interim rule. We are inviting comments about this interim rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this interim rule.

This rule establishes new regulations for the importation of PSB host material into the United States from Canada as a result of the presence of PSB in certain regions of Canada. Under the new regulations, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain documentation, treatment, handling, processing, or utilization requirements in order to be imported into the United States from Canada. Pine nursery stock includes any *Pinus* spp. plant or plant product capable of propagation. Pine products include items such as pine logs, lumber, cut trees (e.g., Christmas trees), wood chips, wood mulch, composted bark, and other wood articles that are unprocessed or have received only primary processing. The restrictions affecting the importation of PSB host material from Canada are necessary to prevent the spread of PSB into noninfested areas of the United States. The new regulations parallel in many respects Canadian restrictions on U.S. exports of PSB host material into Canada.

More than 170 billion cubic feet of pine growing stock is present on timberland in noninfested areas of the United States. As hosts for PSB, ponderosa, loblolly, and red pines may be nearly as suitable as Scotch pine, the primary host. All three species are valuable commercial timber species that occur over wide geographical areas in the United States, primarily in non-PSB infested areas.

There were more than 2,200 operations selling pine nursery plants in the United States. These operations had total sales of pine nursery plants of about \$109 million in 1998. About 1500 of these operations, with total sales of more than \$90 million (83 percent of total sales) were located in noninfested areas of the United States. There were about 1,200 operations selling Scotch pine Christmas trees with sales of about \$27 million in 1998. About 36 percent of these operations are in noninfested areas of the United States. There were also more than 2,100 operations with sales of \$48 million in 1998 selling Christmas trees that are not Scotch pine or Douglas, Fraser, or Noble fir, and include an unknown quantity of other types of *pinus* species. About 64 percent of these operations, accounting for more than half of the sales, were in noninfested areas of the United States.

In 2001, U.S. exports of these products were valued at approximately \$366 million. About 48 percent of these exports went to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB. Given the vast forest resources of the United States and the high value of U.S. exports, in conjunction with the destructive potential of the PSB, it is likely that the further spread of that pest in the United States as a result of the unrestricted movement of PSB host material from infested areas of Canada would have a negative impact on the noninfested areas of the United States, and particularly businesses and industry that rely on pine nursery stock or pine forest materials produced or grown in those areas.

Should PSB spread into previously noninfested areas, it would likely result in control efforts by pine resource owners to mitigate damage to forest resources. Actions by State, Local and Federal governments to prevent the further spread of infestation are also likely. In addition, because many U.S. exports of pine products go to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB, maintaining these export markets after further spread would likely involve costs to growers.

#### Pine Nursery Stock

This rule will place new restrictions on the importation of pine nursery stock from Canada into the United States. All pine nursery stock from Canada must now be issued a written permit as a condition of importation into the United States. In addition, the PC accompanying pine nursery stock will

have to include specific information regarding the article's origin and destination. If the nursery stock is moved from an infested Province in Canada into or through an area of the United States that is not quarantined for PSB, the PC must also state that the articles have been treated with methyl bromide or that the articles meet specified growing and/or inspection requirements to ensure their freedom from PSB.

The overall effect of these requirements should be limited. There is no charge to obtain a written permit from APHIS, and the information required is not extensive. Because a PC is already required for nursery stock, the need for one under this rule should result in no additional cost. The specific origin and destination information called for in this rule should be readily available. Despite potentially attractive treatment costs, the use of methyl bromide may be limited due to the potential damage it may cause to certain live plants and to the limited number of facilities where treatments could be performed.<sup>1</sup> The inspection charge by the Canadian Government should range from less than 0.3 percent of the value of the shipment to not more than 3.1 percent.<sup>2</sup> In addition, any movement of pine nursery stock from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine nursery stock producers already meeting these standards will incur no additional burden in providing the additional declarations of the PC. Therefore, the rule should have little effect on imports of pine nursery stock from Canada, and thus on U.S. marketers and consumers.

#### Cut Pine Christmas Trees

Depending on whether the province of origin is infested or not, the rule requires that cut pine Christmas trees be accompanied by a written permit and either (1) a statement of origin and movement or (2) a certificate issued by the National Government of Canada. Certificates must indicate in the treatment section that the trees have been treated with methyl bromide to kill PSB, or:

- Produced in a plantation that has a program to control or eradicate PSB, or

<sup>1</sup> An Environmental Protection Agency estimate places the treatment of timber with methyl bromide at \$1-3 per 1000 board feet.

<sup>2</sup> Canadian Food Inspection Agency. Inspection of a load of cut Christmas trees should cost no more than \$50C. If the customs value of a shipment is less than \$1600C, the inspection charge is \$5C. Shown in Canadian dollars. \$C1600 = U.S. \$1047.60; \$5C = \$3.27, \$50C = \$32.74.

- Produced in an area where PSB is not considered to be present, or
- 100 percent inspected and found to be free from PSB.

The U.S. destination must also be clearly indicated on the shipment.

The effect of these requirements should also be relatively small. There is no charge to obtain a written permit from APHIS, and the information required for a written permit is not extensive. There is no cost to obtain a statement of origin and movement, and this document does not have to be signed by a public official. We expect the impact of satisfying the certificate and treatment or additional declaration requirements to be small. First, the cost of obtaining a certificate, treatment, or inspection should be low. The cost of a certificate for cut pine Christmas trees should be similar to the cost of a PC, due to the similarities in the information required and the source of the documents. The cost of the certificate should be less than 1 percent of the shipment value.<sup>3</sup> The inspection fee should range from less than 0.3 percent to not more than 3.1 percent of the shipment value. As was previously discussed, the use of methyl bromide should be limited. Second, movement of cut pine Christmas trees from PSB infested areas within Canada is already regulated by the Government of Canada. Finally, only those pine Christmas tree shipments from infested areas of Canada to noninfested areas of the United States will need a certificate, and Canadian imports of Christmas trees represent a small portion of the total U.S. supply (less than 2 percent). Therefore, any change in imports of cut pine Christmas trees should be small and have little effect on U.S. marketers and consumers.

#### Other Pine Products

Depending on the origin and destination of the shipment, this rule requires other pine products from Canada to be accompanied by a written permit and (1) be accompanied by a statement of origin and movement; or (2) be accompanied by a certificate issued by the National Government of Canada that contains an additional declaration that the regulated articles originated in and were moved only through areas where PSB does not exist; or (3) be consigned to a designated U.S. facility that operates under a compliance agreement with APHIS for specified handling or processing of the

articles; or (4) be accompanied by a certificate issued by the National Government of Canada that states that the articles have been treated with methyl bromide to kill the PSB; or (5) be accompanied by a certificate issued by the National Government of Canada that states that the articles are pine bark that has been ground into pieces less than or equal to 1 inch in diameter; or (6) be shipped from a CFIA-approved facility that is inspected by CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures; or (7) be heat treated or heat treated with moisture reduction in accordance with § 319.40-6; or (8) if logs with bark attached, be consigned to a U.S. facility that operates under a compliance agreement with APHIS for specified handling or processing of the articles; or (9) if pine bark, be shipped from a CFIA-approved facility for use as fuel at a cogeneration facility in the United States approved by APHIS.

The overall effect of these requirements should be limited for several reasons. First, the majority of U.S. imports of other pine forest products from Canada originate in noninfested Provinces. Therefore, in most cases, the only additional requirement in this rule is the requirement for a statement of origin and movement. The statement of origin and movement is a document that shippers will generate themselves. There is no cost to obtain the document and it does not have to be signed by a public official.

Second, the option of alternative shipping arrangements should serve to limit the number of shippers required to obtain a certificate and, in some cases, have articles treated or pine bark ground. There may be some expense incurred by shippers in arranging for these alternatives. However, pine forest products with bark attached (*e.g.*, saw logs, pulp wood, branches) and pine bark are regulated for PSB in Canada. Movement of those products from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine forest product and pine bark producers already meeting these standards will incur no additional burden in providing the additional declarations of the certificate.

Finally, even for imports from PSB regulated Canadian provinces, only those shipments destined for or through noninfested areas of the United States need to be accompanied by a certificate. While the precise portion of pine forest products and pine bark imported from the infested areas of Canada to noninfested areas of the United States is not known, pine imports from Canada

represent a small portion of the overall U.S. supply. Therefore, any change in imports is expected to have little effect on U.S. marketers and consumers.

In conclusion, we anticipate limited costs associated with this rule, which is parallel to Canadian restrictions imposed on exports of U.S. PSB host material. Some shippers and other importers will be subject to certain costs and other inconveniences in securing the proper documentation for importation of affected products. However, these costs and inconveniences should be limited when they are incurred. There is no charge to obtain a written permit from APHIS, and the information required for a written permit is not extensive. Obtaining a PC or certificate should cost less than 1 percent of the shipment value. Inspection costs should range from under 0.3 percent to 3.1 percent of shipment value. Because the movement of pine nursery stock, cut pine Christmas trees, pine forest products with bark attached and pine bark from PSB infested areas within Canada is already regulated by the Government of Canada, Canadian producers already meeting these standards will incur no additional burden in providing the additional declarations of the PC or certificate. Hence, we expect little reduction in U.S. imports of Canadian products, with small effects on U.S. marketers and consumers. U.S. producers of nursery stock, Christmas trees, and pine products may benefit slightly to the extent they can market their products at lower costs than Canadian imported products subject to PSB restrictions.

We expect that gains from reducing the risk of further spread of PSB to outweigh the costs of this action. Implementation of this rule will enable APHIS to better prevent the movement of infested PSB host material from Canada into noninfested areas of the United States. This action is equivalent to what is being done domestically. Keeping areas in the United States free from PSB will result in avoided damages to forest resources. Growers will not have to expend funds to control PSB damage or to maintain PSB free status in relation to exports. Federal, State, and local governments will not have to expend funds to control the further spread of the pest. Entities located in noninfested areas and engaged in the movement of PSB host material will not have to deal with domestic movement controls, export restrictions, or inspection and/or treatment of the regulated articles before they can be moved as is the case in U.S. quarantined areas.

<sup>3</sup> Canadian Food Inspection Agency. Currently, the Canadian charge for a PC is \$7 (US\$4.58) when the customs transaction value of the shipment is not more than \$1,600 (US\$1,047.60) and \$17 (US\$11.13) when that value is more than \$1,600.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Use of Methyl Bromide**

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their "national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist."

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions. In connection with this rulemaking, we welcome comments, especially data or other information, regarding other treatments that may be efficacious and technically and economically feasible that we may consider as alternatives to methyl bromide.

**National Environmental Policy**

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the importation of PSB

host material from Canada under the conditions specified in this interim rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment is also available on the Internet at [http://www.aphis.usda.gov/ppq/enviro\\_docs/psb.html](http://www.aphis.usda.gov/ppq/enviro_docs/psb.html).

**Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the office of Management and Budget (OMB). OMB has assigned control number 0579–0257 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk officer for APHIS, Washington, DC 20503; and (2) Docket No. 00–073–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–073–2 and send

your comments within 60 days of publication of this rule.

This rule establishes restrictions on the importation of pine nursery stock and various pine products from Canada in order to prevent the spread of pine shoot beetle into noninfested areas of the United States. The rule contains several information collection requirements, including requirements for permits, additional declarations on certificates and phytosanitary certificates, statements of origin and movement, compliance agreements, and information on destination of products.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.0359818 hours per response.

*Respondents:* Growers and Shippers of pine trees and pine tree products.

*Estimated annual number of respondents:* 2,200.

*Estimated annual number of responses per respondent:* 1.1113636.

*Estimated annual number of responses:* 2,445.

*Estimated total annual burden on respondents:* 88 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government

Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450 and 7701-7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

**Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products**

■ 2. Section 319.37-1 is amended by revising the definition of “restricted article” to read as follows:

**§ 319.37-1 Definitions.**

\* \* \* \* \*

*Restricted article.* Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37-2(a) or (b) of this subpart, and excluding any articles regulated in 7 CFR 319.8 through 319.24-5 or 319.41 through 319.74-4.

\* \* \* \* \*

■ 3. In § 319.37-3, paragraph (a)(15) is revised to read as follows:

**§ 319.37-3 Permits.**

\* \* \* \* \*

(15) Articles (except seeds) of *Pinus* spp. (pine) from Canada;

\* \* \* \* \*

■ 4. Section 319.37-5 is amended by adding a new paragraph (s) and by revising the OMB citation at the end of the section to read as follows:

**§ 319.37-5 Special foreign inspection and certification requirements.**

\* \* \* \* \*

(s) Any restricted article (except seeds) of *Pinus* spp. from Canada may be imported into the United States only

if it meets the following requirements, as well as all other applicable requirements of this subpart, to prevent the introduction of pine shoot beetle (*Tomicus piniperda*):

(1) *From noninfested Canadian Provinces to all areas of the United States.* Restricted articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency (CFIA), may be imported into any area of the United States only if:

(i) The accompanying phytosanitary certificate of inspection specifies the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin;

(ii) The U.S. destination (including county and State) of the restricted articles is plainly indicated on the restricted articles or, if applicable, on the outer covering, packaging, or container; and

(iii) If the restricted articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, the restricted articles are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by the pine shoot beetle.

(2) *From infested or partially infested Canadian Provinces to U.S. infested areas.* Restricted articles that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for and will be moved only through areas in the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(i) The accompanying phytosanitary certificate of inspection specifies the Canadian Province where the articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin; and

(ii) The U.S. destination (including county and State) of the restricted articles is plainly indicated on the restricted articles or, if applicable, on

the outer covering, packaging, or container.

(3) *From infested or partially infested Canadian Provinces to or through U.S. noninfested areas.* Restricted articles that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(i) The accompanying phytosanitary certificate of inspection specifies the Canadian Province where the restricted articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin. The treatment section of the phytosanitary certificate of inspection must indicate that the restricted articles have been treated with methyl bromide to kill the pine shoot beetle (*Tomicus piniperda*) in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual; or alternatively, in lieu of methyl bromide treatment, the phytosanitary certificate of inspection must contain one of the following additional declarations:

(A) “These restricted articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*);” or

(B) “These restricted articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA”; or

(C) “These restricted articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*);” or

(D) “Based on inspection, the restricted articles are no greater than 36 inches high with a bole diameter at soil level of 1 inch or less.”

(ii) The U.S. destination (including county and State) of the restricted articles is plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container.

(iii) If the restricted articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher,

the restricted articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle. (Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0176, 0579-0221, 0579-0246, and 0579-0257)

**Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles**

■ 5. In § 319.40-1, a new definition is added, in alphabetical order, to read as follows:

**§ 319.40-1. Definitions.**

\* \* \* \* \*

*Statement of origin and movement.* A signed, accurate statement certifying the area or areas where the regulated articles originated and, if applicable, the area or areas they were moved through prior to importation. The statement may be printed directly on the documentation accompanying the shipment of regulated articles, or it may be provided on a separate document. The statement does not require the signature of a public officer of a national plant protection organization; exporters may sign the document.

\* \* \* \* \*

**§ 319.40-2 [Amended]**

■ 6. In § 319.40-2, paragraph (f) is amended by adding the words “, as well as cut trees (e.g., Christmas trees),” immediately before the words “imported from Canada”.

■ 7. In § 319.40-3, paragraph (a)(1)(i) and the OMB citation at the end of the section are revised to read as follows:

**§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.**

- (a) \* \* \*
- (1) \* \* \*

(i) From Canada: Regulated articles, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae and regulated articles of pine (*Pinus spp.*) that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579-0049 and 0579-0257)

■ 8. Section 319.40-5 is amended by adding a new paragraph (m) and by

revising the OMB citation at the end of the section to read as follows:

**§ 319.40-5 Importation and entry requirements for specified articles.**

\* \* \* \* \*

(m) *Regulated articles of pine (Pinus spp.) that are not completely free of bark from Canada.*

(1) *Cut pine Christmas trees.* Cut pine Christmas trees from Canada may be imported into the United States only if they meet the following requirements, as well as all other applicable requirements of this subpart:

(i) *From noninfested Canadian Provinces to all areas of the United States.* Cut pine Christmas trees that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency (CFIA), may be imported into any area of the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved only through areas of Canada not considered to be infested with pine shoot beetle, as determined by the CFIA;

(B) The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container; and

(C) If the cut pine Christmas trees are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(ii) *From infested or partially infested Canadian Provinces to U.S. infested areas.* Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for and will be moved only through areas in the United States that are quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter,

may be imported into the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved through one or more Canadian Provinces considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA; and

(B) The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container.

(iii) *From infested or partially infested Canadian Provinces to or through U.S. noninfested areas.* Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a certificate that specifies the Canadian Province where the Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and indicates in the treatment section of the certificate that the Christmas trees have been treated with methyl bromide to kill the pine shoot beetle; or, alternatively, in lieu of methyl bromide treatment, the certificate contains one of the following additional declarations:

(1) “These regulated articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*);” or

(2) “These regulated articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered to be present, as determined by the CFIA;” or

(3) “These regulated articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*);” and

(B) The U.S. destination (including county and State) is plainly indicated on the Christmas trees or on the outer covering or container; and

(C) If the Christmas trees are to be moved through an area of the United

States that is quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the Christmas trees are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(2) *Other pine articles.* Regulated articles from Canada (other than cut pine Christmas trees) that consist of pine bark, including, but not limited to, chips, nuggets, mulch, and compost, as well as pine products with pine bark attached, including, but not limited to, logs, lumber, pulpwood, stumps, and raw pine materials for wreaths and garlands, may be imported into the United States only if they meet one of the following requirements, as well as all other applicable requirements of this subpart:

(i) *From Canadian noninfested Provinces to all areas of the United States.* Regulated articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA, may be imported into any area of the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Province where the regulated articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the regulated articles originated in and were only moved through Provinces of Canada not considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA;

(B) The U.S. destination (including county and State) is plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; and

(C) If the regulated articles are to be moved through an area of the United States that is quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(ii) *From Canadian infested Provinces or partially infested Provinces to U.S. infested areas.* Regulated articles that originated in or were moved through a Canadian infested or partially infested Province, as determined by the CFIA, and are destined for and will be moved only through areas in the United States that are quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the articles originated, and if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin, and also states that the regulated articles originated in and were moved through one or more Provinces of Canada considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA; and

(B) The U.S. destination (including county and State) is plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(iii) *From noninfested areas in partially infested Canadian Provinces to or through U.S. noninfested areas.* Regulated articles that originated in a noninfested area county or municipal regional county of a partially infested Canadian Province, as determined by the CFIA, and were moved through Canadian noninfested areas only, and are destined for or will be moved through any area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, may only be imported into the United States if one of the following sets of conditions is met:

(A) The regulated articles are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The certificate also must contain the following additional declaration: “These regulated articles originated in and were moved only through areas where pine shoot beetle (*Tomicus piniperda*) is not present, as determined by the CFIA.” In addition, the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container. If the regulated

articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle; or

(B) The regulated articles are consigned to a designated U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the articles. The name and address of the U.S. facility (including county and State) receiving the regulated articles must be plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container. If the regulated articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(iv) *From Canadian infested Provinces or infested areas of partially infested Provinces to or through U.S. noninfested areas.* (A) Regulated articles that originated in or were moved through either a Canadian Province considered to be infested with pine shoot beetle or an infested area within a partially infested Canadian Province, as determined by the CFIA, and that are destined for or will be moved through any area in the United States not quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, may only be imported into the United States if one of the following sets of conditions provided is met:

(1) The regulated articles are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been

treated with methyl bromide to kill the pine shoot beetle in accordance with 7 CFR 319.40–7(f). In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(2) The regulated articles consist of pine bark and are accompanied by a certificate that specifies both the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The additional declaration section must state, “The pine bark in this shipment has been ground into pieces less than or equal to 1 inch in diameter.” In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(3) The regulated articles are shipped from a CFIA-approved facility that processes only regulated articles that originated in areas in Canada or the United States not considered to be infested with pine shoot beetle. The facility must be inspected by the CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures, and the CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the articles, as well as the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(4) The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated in accordance with § 319.40–6. In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, package, or container.

(5) The regulated articles, consisting of logs with bark attached, are consigned to a U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40–8 for specified handling or processing of the regulated articles. The logs must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. facility. The logs must be accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the logs originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. In addition, the name and address (including county and State) of the U.S. facility receiving the logs must be plainly indicated on the regulated articles or, if applicable, on the outer covering or container.

(6) The regulated articles, consisting of pine bark, are shipped from a CFIA-approved facility for use as a fuel at a cogeneration facility in the United States approved by APHIS. The pine bark must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. cogeneration facility. The Canadian facility from which the pine bark is shipped must be inspected by the CFIA at least twice a year to verify that the facility is following handling and processing procedures that adequately safeguard the pine bark for shipment to the U.S. cogeneration facility. CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the pine bark, as well as the name and address of the U.S. cogeneration facility receiving the shipment (including county and State) must be plainly indicated on the outer covering, packaging, or container of the pine bark.

(B) If the regulated articles in paragraphs (i)(2)(iv)(1) through (5) of this section are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50–3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0135, and 0579–0257)

**Subpart—Gypsy Moth Host Material From Canada**

- 9. Section 319.77–4 is amended as follows:
  - a. In paragraph (a), footnote 1 is revised to read as set forth below.
  - b. In paragraph (b), footnote 2 is revised to read as set forth below.

**§ 319.77–4 Conditions for the importation of regulated articles.**

\* \* \* \* \*

<sup>1</sup> Trees and shrubs from Canada may be subject to additional restrictions under “Subpart—Nursery Stock, Plants, Roots, Seeds, and Other Plant Products” (§§ 319.37 through § 319.37–14 of this part) and “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles” (§§ 319.40–1 through 319.40–11 of this part).

\* \* \* \* \*

<sup>2</sup> Logs from Canada are also subject to restrictions under “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles” (§§ 319.40–1 through 319.40–11 of this part).

\* \* \* \* \*

Done in Washington, DC, this 28th day of September 2004.  
**Bill Hawks,**  
*Under Secretary for Marketing and Regulatory Programs.*  
 [FR Doc. 04–22220 Filed 10–19–04; 8:45 am]  
**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 930**

[Docket No. FV03–930–6 FIR]

**Tart Cherries Grown in the States of Michigan, et al.; Additional Option for Handler Diversion**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim rule that added another method of handler diversion to the regulations under the Federal tart cherry marketing order (order). Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement when volume regulation is in effect by diverting cherries or cherry products rather than placing them in an inventory reserve. Under this additional method, handlers will be allowed to

obtain diversion credit for diverting tart cherries, after processing, that may not be acceptable for the finished products manufactured by the handler. This action was unanimously recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** Effective November 19, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 6C02, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734-5243, or Fax: (301) 734-5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or fax: (202) 720-8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-5698, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Handler diversion is authorized under § 930.59 of the tart cherry marketing order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products into authorized outlets. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. The volume regulation provisions of the order provide for a combination of processor owned inventory reserves and grower or handler diversion of excess tart cherries. Reserve cherries may be released for sale into commercial outlets when the free percentage portion of the regulated crop is not expected to fill demand.

Section 930.59(b) of the order provides for the designation of allowable forms of handler diversion. These include: Uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities as provided for in § 930.59(c).

Section 930.159 of the rules and regulations under the order allows handlers to divert cherries by destruction of the cherries at the handler's facility. Currently, at-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. However, experience has shown that this limitation places a burden on handlers regulated under this order.

To remove this burden, the Board unanimously recommended that handlers be allowed to divert and receive diversion credit for tart cherries after processing that may not be acceptable for the finished products they manufacture. With the capability to divert such cherries after processing, but

before the finished product is completed, handlers would have an incentive to remove the lower quality processed cherries from the lot, meet their restricted obligation requirements, and improve the quality of their products. Improvement in the quality of tart cherries and tart cherry products would benefit producers, handlers, and consumers.

This action continues to provide handlers more flexibility in meeting their restricted obligation requirements. The ability to perform at-plant diversion after placing the cherries into the processing line, but before a finished product is completed, will benefit all handlers. This action is expected to especially benefit handlers who only process one product. In many instances, these handlers are small.

This rule continues to allow a handler who processes only five plus one cherries (25 pounds of tart cherries with 5 pounds of sugar added) to fulfill his/her restricted percentage obligation (in a volume regulated year) by diverting at-plant, lower quality wholesome fruit from his/her five plus one processing line. Previously, the diversion took place prior to processing and handlers that processed one product were forced to divert their good quality tart cherries with the lower quality wholesome cherries, or divert cherries by some other approved method. Handlers processing more than one product also are able to take advantage of the additional method of at-plant diversion.

Diversion may also be accomplished by handlers donating cherries to charitable organizations, utilizing cherries in exempt outlets, or redeeming grower diversion certificates obtained from growers who have diverted cherries by non-harvest, and who have been issued diversion certificates by the Board in accordance with rules and regulations governing the issuance of grower diversion certificates (§ 930.158).

The Board reported that during the 2001-2002 crop year, the inventory reserve contained 44.3 percent frozen products, 11.3 percent waterpack, 15.2 percent piefill, 28 percent juice and juice concentrate, and 1.2 percent other products. These percentages show that frozen products, juice and juice concentrate make up most of the reserve quantities.

Pursuant to § 930.159(b), handlers electing to divert cherries or cherry products must first notify the Board and submit a plan for approval. Such notification and plan must include an agreement that diversion will take place under the supervision of the USDA Processed Products Inspection Service or Board employees, and that the costs

of such supervision are to be paid by the handler. USDA inspectors supervise the diversion of cherries or finished products at the current hourly rate under USDA's inspection fee schedule (7 CFR 54.42). Board employees supervise diversion at the same payment rate.

Once diversion is satisfactorily accomplished, handlers receive diversion certificates stating the weight of cherries diverted. Such diversion certificates can be used to satisfy handlers' restricted percentage obligations. Cherries and finished cherry products that have been diverted are not subject to assessments.

### **The Regulatory Flexibility Act and Effects on Small Businesses**

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

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

and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The Board reported that during the 2001–2002 crop year, the inventory reserve contained 44.3 percent frozen products, 11.3 percent waterpack, 15.2 percent piefill, 28 percent juice and juice concentrate, and 1.2 percent other products. These percentages show that frozen products, juice and juice concentrate make up most of the reserve quantities.

The Board unanimously recommended this additional method for diversion credit to allow handlers to divert product after processing that may not be acceptable for the finished products manufactured by the handler. As discussed earlier, this action continues to provide handlers more flexibility in meeting their restricted obligation requirements and is expected to be particularly helpful to handlers who produce only one product. In many instances, the one-product handlers in the tart cherry industry are small.

Handlers that process juice concentrate and other products can more easily meet their restricted obligation requirements by juicing and processing lower quality wholesome product and placing it in the inventory reserve. Handlers that only have the ability to process products requiring higher quality fruit like five plus one cherries have to put this fruit into the inventory reserves, or take advantage of other diversion options available under the order.

To sell more of their higher quality products, some handlers purchase cherries or diversion credit certificates from other handlers to meet their restricted obligation requirements. The added flexibility provided by this action will help all handlers, and is expected to especially benefit the one-product handlers who will be able to sell more of their higher quality cherries in finished product form.

Producers also are expected to benefit from the implementation of this action. Currently, producers can use in-orchard tank diversion, in which cherries harvested into tanks are measured, calculated then diverted in the orchard.

This method of diversion, however, removes both good and lesser quality fruit. Under the Board's recommendation, producers could deliver all of their fruit to handlers and the good quality fruit would be sorted and the poor quality fruit diverted or dumped. Producers would be paid for the good quality fruit. According to the Board, growers are paid on a quality point basis relative to the quality of the fruit delivered. This action would continue to provide producers with more consistent income proportionate to the quality of the fruit delivered to handlers and with discretion to reduce orchard diversion. As such, producers can be more selective in complying with the grower diversion process.

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

With regard to alternatives, the Board felt that the recommendation was the only solution to providing handlers additional flexibility in meeting their restricted obligation requirements.

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

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

An interim final rule concerning this action was published in the **Federal Register** on July 9, 2004. Copies of the rule were mailed by the Board's staff to all Board members and tart cherry handlers. In addition, the Office of the Federal Register and USDA made the rule available through the Internet. That rule provided for a 60-day comment period which ended September 7, 2004. No comments were received.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 41383, July 9, 2004) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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

■ Accordingly, the interim final rule amending 7 CFR part 930 which was published at 69 FR 41383 on July 9, 2004, is adopted as a final rule without change.

Dated: October 14, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-23417 Filed 10-19-04; 8:45 am]

BILLING CODE 3410-02-P

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 72

RIN 3150-AH50

#### List of Approved Fuel Storage Casks: NAC-MPC Revision, Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule: Confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 27, 2004, for the direct final rule that was published in the **Federal Register** on August 13, 2004 (69 FR 50053). This direct final rule amended the NRC's regulations to revise the NAC-MPC cask system listing to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1025.

**EFFECTIVE DATE:** The effective date of October 27, 2004, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (<http://ruleforum.llnl.gov>). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On August 13, 2004 (69 FR 50053), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the NAC-MPC cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to CoC No. 1025. This amendment increases vacuum drying time limits, deletes canister removal from concrete cask requirements, revises surface contamination removal time limits, and revises allowable contents fuel assembly limits. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 27, 2004. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 14th day of October, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 04-23426 Filed 10-19-04; 8:45 am]

BILLING CODE 7590-01-P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### 14 CFR Part 97

[Docket No. 30426; Amdt. No. 3107]

#### Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

**DATES:** This rule is effective October 20, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 2004.

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

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service,

Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

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

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

### The Rule

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

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

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

### Conclusion

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

### List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on October 8, 2004.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

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

### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

\* \* \* *Effective November 25, 2004*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, RNAV (GPS) Z RWY 18L, Orig  
Huntsville, AL, Huntsville Intl-Carl T. Jones Field, RNAV (GPS) Y RWY 18L, Orig  
Teller, AK, Teller, RNAV (GPS) RWY 7, Orig  
Teller, AK, Teller, RNAV (GPS) RWY 25, Orig

De Queen, AR, J. Lynn Helms Sevier County, RNAV (GPS) RWY 8, Orig  
De Queen, AR, J. Lynn Helms Sevier County, GPS RWY 8, Orig-B, CANCELLED  
Hot Springs, AR, Memorial Field, RNAV (GPS) RWY 5, Amdt 1  
Mena, AR, Mena Intermountain Muni, RNAV (GPS) RWY 17, Orig-A  
North Little Rock, AR, North Little Rock Muni, RNAV (GPS) RWY 35, Orig  
North Little Rock, AR, North Little Rock Muni, GPS RWY 35, Orig, CANCELLED  
Paragould, AR, Kirk Field, RNAV (GPS) RWY 4, Orig-A  
Paragould, AR, Kirk Field, RNAV (GPS) RWY 22, Orig-A  
Pine Bluff, AR, Grider Field, RNAV (GPS) RWY 18, Orig  
Russellville, AR, Russellville Rgnl, RNAV (GPS) RWY 25, Orig-A  
Carlsbad, CA, McClellan-Palomar, RNAV (GPS) RWY 24, Amdt 1  
Inyokern, CA, Inyokern, RNAV (GPS) Y RWY 2, Orig-A  
Palm Springs, CA, Bermuda Dunes, RNAV (GPS) RWY 10, Orig-B  
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (GPS) RWY 17L, Orig-A  
Grand Junction, CO, Walker Field, RNAV (GPS) RWY 29, Amdt 1A  
Longmont, CO, Vance Brand, RNAV (GPS)-B, Orig-A  
Longmont, CO, Vance Brand, RNAV (GPS) RWY 29, Orig-A  
Meeker, CO, Meeker, RNAV (GPS)-B, Orig-A  
Meeker, CO, Meeker, RNAV (GPS) RWY 3, Orig-A  
Trinidad, CO, Perry Stokes, RNAV (GPS) RWY 3, Orig-A  
Crestview, FL, Bob Sikes, RNAV (GPS) RWY 17, Orig  
Carrollton, GA, West Georgia Regional-OV Gray Field, NDB RWY 35, Amdt 3  
Carrollton, GA, West Georgia Regional-OV Gray Field, ILS OR LOC/NDB RWY 35, Orig  
Carrollton, GA, West Georgia Regional-OV Gray Field, LOC RWY 34, Amdt 2, CANCELLED  
Kailua-Kona, HI, Kona Intl at Keahole, VOR OR TACAN RWY 35, Amdt 7  
Kailua-Kona, HI, Kona Intl at Keahole, VOR/DME OR TACAN RWY 17, Amdt 4  
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) RWY 17, Orig-B  
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) Z RWY 35, Orig-B  
Kamuela, HI, Waimea-Kohala, RNAV (GPS) RWY 4, Orig-A  
Kamuela, HI, Waimea-Kohala, RNAV (GPS) RWY 22, Orig-A  
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 17, Orig-A  
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 22, Orig-A  
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 35, Orig-A  
Eureka, KS, Eureka Muni, RNAV (GPS) 18, Orig-A  
Kingman, KS, Kingman Airport-Clyde Cessna Field, RNAV (GPS) RWY 18, Orig-A  
Kingman, KS, Kingman Airport-Clyde Cessna Field, RNAV (GPS) RWY 36, Orig-A  
Lawrence, KS, Lawrence Muni, RNAV (GPS) RWY 15, Orig-A

Topeka, KS, Philip Billard Muni, RNAV (GPS) RWY 18, Orig-A  
 Topeka, KS, Philip Billard Muni, RNAV (GPS) RWY 36, Orig-A  
 Topeka, KS, Philip Billard Muni, RNAV (GPS) RWY 4, Orig-A  
 Norton, KS, Norton Muni, RNAV (GPS) RWY 16, Orig-A  
 Wichita, KS, Cessna Aircraft Field, RNAV (GPS)-D, Orig-A  
 Beverly, MA, Beverly Muni, VOR RWY 16, Amdt 5  
 Beverly, MA, Beverly Muni, LOC RWY 16, Amdt 6  
 Beverly, MA, Beverly Muni, NDB-A, Amdt 13  
 Beverly, MA, Beverly Muni, RNAV (GPS) RWY 16, Orig  
 Beverly, MA, Beverly Muni, GPS RWY 16, Orig-A, CANCELLED  
 Frederick, MD, Frederick Muni, ILS OR LOC RWY 23, Amdt 5  
 Ocean City, MD, Ocean City Muni, RNAV (GPS) RWY 14, Orig-C  
 Portland, ME, Portland Intl Jetport, NDB RWY 11, Amdt 16  
 Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 11, Amdt 1  
 Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 11, Amdt 1  
 Broken Bow, NE, Broken Bow Muni, RNAV (GPS) RWY 32, Orig  
 Broken Bow, NE, Broken Bow Muni, VOR/DME RWY 32, Orig  
 Wayne, NE, Wayne Muni, RNAV (GPS) RWY 22, Orig  
 Wayne, NE, Wayne Muni, NDB RWY 17, Orig  
 Wayne, NE, Wayne Muni, NDB RWY 22, Orig  
 Wayne, NE, Wayne Muni, NDB RWY 35, Orig  
 Gallup, NM, Gallup Muni, RNAV (GPS) RWY 6, Orig  
 Gallup, NM, Gallup Muni, RNAV (GPS) RWY 24, Orig  
 Gallup, NM, Gallup Muni, GPS RWY 6, Orig-A, CANCELLED  
 Gallup, NM, Gallup Muni, GPS RWY 24, Orig-A, CANCELLED  
 Ely, NV, Ely Airport-Yelland Field, RNAV (GPS) RWY 18, Orig-B  
 Olean, NY, Cattaraugus County-Olean, RNAV (GPS) RWY 4, Orig  
 Olean, NY, Cattaraugus County-Olean, RNAV (GPS) RWY 22, Orig  
 Olean, NY, Cattaraugus County-Olean, LOC RWY 22, Amdt 5B  
 Olean, NY, Cattaraugus County-Olean, GPS RWY 4, Orig-A, CANCELLED  
 Olean, NY, Cattaraugus County-Olean, GPS RWY 22, Orig-A, CANCELLED  
 Olean, NY, Cattaraugus County-Olean, VOR/DME RNAV RWY 22, AMDT 4B, CANCELLED  
 Potsdam, NY, Potsdam Muni (Damon Field), NDB RWY 24, Amdt 4  
 Potsdam, NY, Potsdam Muni (Damon Field), NDB OR GPS RWY 24, Amdt 3A, CANCELLED  
 Potsdam, NY, Potsdam Muni (Damon Field), RNAV (GPS) RWY 24, Orig  
 Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 22, Amdt 6  
 Seneca Falls, NY, Finger Lakes Regional, RNAV (GPS) RWY 1, Amdt 2  
 Syracuse, NY, Syracuse Hancock Intl, ILS RWY 28, Amdt 33A  
 Syracuse, NY, Syracuse Hancock Intl, RNAV (GPS) RWY 28, Orig-A

Medford, OK, Medford Muni, RNAV (GPS) RWY 35, Orig-A  
 Clarion, PA, Clarion County, VOR-A, Amdt 2  
 Clarion, PA, Clarion County, RNAV (GPS) RWY 6, Orig  
 Clarion, PA, Clarion County, RNAV (GPS) RWY 24, Orig  
 Clarion, PA, Clarion County, VOR/DME RNAV OR GPS RWY 6, Orig-B, CANCELLED  
 Clarion, PA, Clarion County, VOR/DME RNAV OR GPS RWY 24, Orig-A, CANCELLED  
 Doylestown, PA, Doylestown, VOR RWY 23, Amdt 7  
 Doylestown, PA, Doylestown, RNAV (GPS) RWY 23, Orig  
 Rutland, VT, Rutland State, LOC Z RWY 19, Amdt 1  
 Rutland, VT, Rutland State, RNAV (GPS) RWY 19, Orig  
 Rutland, VT, Rutland State, GPS RWY 19, Amdt 2B, CANCELLED  
 Seattle, WA, Boeing Field/King County Intl, RNAV (GPS) RWY 13R, Orig  
 Walla Walla, WA, Walla Walla Regional, RNAV (GPS) RWY 2, Orig  
 Walla Walla, WA, Walla Walla Regional, GPS RWY 2, Orig-A, CANCELLED  
 \* \* \*Effective December 23, 2004

Frankfort, IN, Frankfort Muni, RNAV (GPS) RWY 27, Orig-A  
 Greencastle, IN, Putnam County, RNAV (GPS) RWY 36, Orig-A  
 Marion, IN, Marion Muni, ILS OR LOC RWY 4, Amdt 7A  
 Hibbing, MN, Chisholm-Hibbing, VOR RWY 13, Amdt 13

[FR Doc. 04-23374 Filed 10-19-04; 8:45 am]  
**BILLING CODE 4910-13-P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AF92

#### Administrative Review Process; Incorporation-by-Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules with request for comments.

**SUMMARY:** We are revising our regulations to provide an alternative procedure that an Administrative Law Judge (ALJ) may use, in certain situations, to satisfy the existing requirement for issuing a written decision that gives the findings of fact and the reasons for the decision. If an ALJ enters a wholly favorable, oral decision into the record of a hearing, the ALJ, in certain situations, may fulfill the existing requirement for issuing a

written decision that gives the findings and the reasons for the decision by issuing a written decision that incorporates by reference the findings of fact and the reasons stated orally at the hearing. Under the regulations as revised, this incorporation-by-reference procedure may not be used if the ALJ determines that the oral findings and reasons should be changed in the written decision. Where the ALJ determines that a change is required, the ALJ must issue a written decision that sets forth the findings of fact and the reasons for the decision under the existing procedure, without relying on the incorporation-by-reference procedure.

**DATES:** These rules are effective October 20, 2004. To be sure your comments are considered, we must receive them no later than December 20, 2004.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401 between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

*Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, <http://www.gpoaccess.gov/fr/index.html>. It is also available on our Internet site facility at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Augustine, Social Insurance Specialist, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-0020 or TTY 410-966-5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

## Background

We decide claims for Social Security benefits under title II of the Social Security Act (the Act) and for Supplemental Security Income (SSI) benefits under title XVI of the Act in an administrative review process that generally consists of four steps. Generally, individuals who are not satisfied with our initial determination may request reconsideration. Individuals who are not satisfied with our reconsidered determination may request a hearing, which is held by an ALJ in the Office of Hearings and Appeals (OHA). Individuals who are not satisfied with an ALJ's decision may request review by our Appeals Council. Individuals who have completed these steps and are not satisfied with our final decision may request judicial review of the decision in the Federal courts.

On September 25, 2003, at a hearing before the House Ways and Means Subcommittee on Social Security, we outlined a long-term approach for achieving improvements in the overall disability determination process, especially for the purpose of reducing the time required to process disability claims. (A description of the approach is available at <http://mwww.ba.ssa.gov/pressoffice/pr/DDPImprovement-pr.htm>.)

To improve the process in the interim, we have implemented a number of initiatives that could be undertaken in the short-term. At the ALJ hearing level, the short-term initiatives we have implemented include—

- Involving ALJs in early screening of claims to identify those claims in which a wholly favorable decision can be made on-the-record without a hearing;
- Developing a new, electronically generated short-form format for use in wholly favorable decisions;
- Allowing ALJs to announce at the hearing wholly favorable, oral decisions that are followed by written decisions; and
- Expanding the use of technology in OHA, including the use of video teleconferencing, speech recognition software, and digital recording of hearings.

Our existing regulations generally give an ALJ broad discretion in determining how hearings are to be conducted and do not preclude the ALJ from entering a wholly favorable, oral decision into the record at the close of the hearing (*see* 20 CFR 404.929, 404.944, 404.950, 416.1429, 416.1444, and 416.1450). When we implemented the oral decision initiative in 2002, we gave our ALJs discretion to issue oral decisions when they concluded, upon

full inquiry into the issues at the hearing, that a wholly favorable decision should be issued. This initiative contemplated that following the hearing, the ALJ would create and issue a short-form written decision to fulfill the requirements of 20 CFR 404.953 and 416.1453, which require issuance of a written decision that “gives the findings of fact and the reasons for the decision.”

To facilitate greater use of the oral decision procedure when its use is warranted, we are amending our regulations to authorize ALJs to issue wholly favorable, written decisions that incorporate by reference the findings of fact and reasons for the decisions that were orally stated by the ALJ at the hearing. Such written decisions will satisfy the existing regulatory requirement that an ALJ issue a written decision that “gives the findings of fact and the reasons for the decision.”

Under these final rules with request for comments, the wholly favorable written decision issued subsequent to the hearing may incorporate the oral findings and rationale by reference only if the ALJ determines that it is not necessary to change the oral findings or rationale in any way. If the ALJ determines that the oral findings or rationale should be changed, the written decision may not incorporate the orally stated findings and rationale by reference. The ALJ must issue a written decision that sets forth the findings of fact and the reasons for the decision under the existing procedures.

We believe that the changes made by these rules will facilitate use of the oral decision procedure by eliminating the duplicative work that is involved in ALJs repeating the oral findings and reasons in the written decision. We expect that these rules will increase the efficiency with which the oral decision procedure may be used and will reduce the time required to issue wholly favorable decisions.

## Explanation of Changes

We are amending §§ 404.953 and 416.1453 to provide that if an ALJ enters a wholly favorable, oral decision into the record of a hearing, the ALJ may fulfill the existing requirement for issuing a written decision that gives the findings of fact and the reasons for the decision by issuing a written decision that incorporates by reference the findings of fact and the reasons stated orally at the hearing. As noted above, the ALJ may use this procedure only if the ALJ does not determine that a change in the oral findings or reasons is required.

These final rules specify that, where the ALJ determines that a change in the oral findings or reasons stated at the hearing is required, the ALJ must issue a written decision that sets forth the findings of fact and the reasons for the decision under our existing procedures for issuing written decisions. We are precluding use of the incorporation-by-reference procedure in these instances because it could be confusing for claimants and for our personnel who must subsequently effectuate or review the ALJ's decision.

When the circumstances for using the incorporation-by-reference procedure are present, the ALJ is not required by these rules to rely on that procedure to give the findings of fact and the reasons for his or her decision. The ALJ retains the discretion in these circumstances to issue a decision in the short-form or full-length format. Our intent is to provide ALJs with a range of useful options for issuing wholly favorable decisions. Under these final rules, an ALJ who makes a wholly favorable oral decision at the hearing is required to include in the record, as an exhibit entered into the record at the hearing, a checklist that sets forth key data, findings of fact, and narrative rationale for the decision. Preparation of the checklist will aid the ALJ in determining if a wholly favorable decision is warranted. When the ALJ decides not to state an oral decision, the checklist will constitute a working paper of the ALJ and will not be entered into the record. The checklist will assist our staff in preparing a decision when an oral decision is stated but the incorporation-by-reference procedure is not used. The checklist will also provide information needed by our personnel who implement or evaluate decisions that rely on the incorporation-by-reference procedure.

As revised by these final rules, §§ 404.953 and 416.1453 specify that the incorporation-by-reference procedure will be used only in categories of cases that we identify in advance as suitable for its use. To begin with, we plan to apply this procedure, which requires use of a specialized checklist and changes in our notice procedures, only in initial adult disability claims under title II and title XVI of the Act (excluding disabled widow/widowers and disabled adult child cases under title II).

The revised regulations further specify that when we use the incorporation-by-reference procedure in a decision, we will provide the party or parties to the hearing a record of the oral decision upon written request. The parties will be advised of their right to

request a record of the oral decision in the notice of the decision. We may provide the record in the form of a typed transcript or a tape recording, a compact disc of a digital recording, or eventually an electronically propagated digital recording. We believe this procedure will help to ensure that the notice of decision is clear and easy to understand.

In implementing these final rules, we will issue guidance instructing ALJs to explain to the parties, when announcing an oral decision, that the incorporation-by-reference procedure will not be used if the ALJ determines that the oral findings and reasons for the decision require change or if the ALJ decides that the procedure should not be used for any other reason. The ALJ will also explain that if the incorporation-by-reference procedure is not used, the written decision will set forth the findings of fact and the reasons for the decision in writing using our existing procedures and discuss any changes in the findings and reasons as stated at the hearing. The ALJ will further explain to the parties that they will be given an opportunity to comment on any possible changes that would make the written decision that is to be issued less than wholly favorable.

Our implementing instructions will also provide that the written decision issued by an ALJ when the incorporation-by-reference procedure is used shall be brief and shall be issued as an integral part of the notice of decision that we issue. Where the incorporation-by-reference procedure is used, the notice of decision will not attach a separate written decision (as all notices of decisions issued by ALJs currently do).

#### Clarity of the Final Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these rules, we invite your comments on how to make the rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

- Could we improve clarity by adding tables, lists, or diagrams?

#### Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and comment procedures in this case. Good cause exists because these rules only modify the procedures we use to issue wholly favorable decisions and do not change the substantive requirements that such decisions must satisfy. Therefore, we find that prior public comment on these rules is unnecessary.

We are issuing these rules as final rules with a request for comments because we are interested in receiving public comments on the substance of these rules. We will make any changes in the rules that we determine are warranted by the comments we receive, and will issue revised rules if necessary. We also wish to consider the public comments on these rules in further assessing and developing our approach to making long-term changes to the disability claim process.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, as provided for by 5 U.S.C. 553(d). Considering the average processing times that individuals pursuing appeals of disability claims currently face, we find that it is in the public interest to make these rules effective upon publication.

#### Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules with request for comments meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

#### Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as

provided in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

These final rules with request for comments contain reporting requirements in §§ 404.953(a) and 416.1453(a), as revised. We estimate that there will be 5,000 annual respondents, who will each make 1 request. We estimate that it will take an average of 5 minutes per request for an estimated annual burden of 417 hours. An Information Collection Request has been submitted to OMB for clearance. While these rules will be effective upon publication, these burdens will not be effective until cleared by OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the OMB desk officer for SSA within 30 days of publication of this final rule at the following address/number: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974.

To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 14, 2004.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the

Code of Federal Regulations are amended as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950- )**

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 2. Section 404.953 is amended by redesignating current paragraph (b) as paragraph (c) and adding a new paragraph (b), to read as follows:

**§ 404.953 The decision of an administrative law judge.**

\* \* \* \* \*

(b) *Wholly favorable oral decision entered into the record at the hearing.* The administrative law judge may enter a wholly favorable oral decision into the record of the hearing proceedings. If the administrative law judge enters a wholly favorable oral decision into the record of the hearing proceedings, the administrative law judge may issue a written decision that incorporates the oral decision by reference. The administrative law judge may use this procedure only in those categories of cases that we identify in advance. The administrative law judge may only use this procedure in those cases where the administrative law judge determines that no changes are required in the findings of fact or the reasons for the decision as stated at the hearing. If a wholly favorable decision is entered into the record at the hearing, the administrative law judge will also include in the record, as an exhibit entered into the record at the hearing, a document that sets forth the key data, findings of fact, and narrative rationale for the decision. If the decision incorporates by reference the findings and the reasons stated in an oral decision at the hearing, the parties shall also be provided, upon written request, a record of the oral decision.

\* \* \* \* \*

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED**

■ 3. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

■ 4. Section 416.1453 is amended by redesignating current paragraphs (b) and (c) as paragraphs (c) and (d) respectively and adding a new paragraph (b), to read as follows:

**§ 416.1453 The decision of an administrative law judge.**

\* \* \* \* \*

(b) *Wholly favorable oral decision entered into the record at the hearing.* The administrative law judge may enter a wholly favorable oral decision into the record of the hearing proceedings. If the administrative law judge enters a wholly favorable oral decision into the record of the hearing proceedings, the administrative law judge may issue a written decision that incorporates the oral decision by reference. The administrative law judge may use this procedure only in those categories of cases that we identify in advance. The administrative law judge may only use this procedure in those cases where the administrative law judge determines that no changes are required in the findings of fact or the reasons for the decision as stated at the hearing. If a wholly favorable decision is entered into the record at the hearing, the administrative law judge will also include in the record, as an exhibit entered into the record at the hearing, a document that sets forth the key data, findings of fact, and narrative rationale for the decision. If the decision incorporates by reference the findings and the reasons stated in an oral decision at the hearing, the parties shall also be provided, upon written request, a record of the oral decision.

\* \* \* \* \*

[FR Doc. 04–23357 Filed 10–19–04; 8:45 am]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF STATE**

**22 CFR Part 51**

**RIN 1400–ZA07**

**[Public Notice: 4862]**

**Passport Procedures—Amendment to Passport Regulations; Correction**

**AGENCY:** State Department.

**ACTION:** Interim rule; correction.

**SUMMARY:** The Department of State published a document in the **Federal Register** of October 13, 2004, concerning request for comments on the requirement that a statement of consent submitted in support of a minor's application be notarized. The document contained incorrect dates.

**FOR FURTHER INFORMATION CONTACT:** Gregory K.O. Davis, Office of Directives Management, Bureau of Administration, Department of State 202–312–9607; Fax 202–312–9603.

**Correction**

In the **Federal Register** of October 13, 2004, in FR Doc. 04–22937, on page 60811, in the third column, correct the **DATES** caption to read:

**DATES:** The effective date is November 1, 2004. The Department will accept comments from the public up to November 13, 2004.

Dated: October 14, 2004.

**Gregory K.O. Davis,**

*Regulatory Coordinator, Department of State.*  
[FR Doc. 04–23469 Filed 10–19–04; 8:45 am]

**BILLING CODE 4710–24–P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MOMSEN (DDG 92) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** January 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Commander Scott A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate

General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MOMSEN (DDG 92) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or

lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner different from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

■ 1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS MOMSEN:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS MOMSEN	DDG 92	1.88 meters.

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical

order, the following entry for USS MOMSEN:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Obstruction angle relative ship's headings
USS MOMSEN	DDG 92	108.10 thru 112.50°

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS MOMSEN:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. Annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward mast-head light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS MOMSEN	DDG 92	X	X	X	14.5

**Note:** This document was received at the Office of the Federal Register on October 13, 2004.

Dated: January 12, 2004.

**S. A. Kenney,**

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 04-23215 Filed 10-19-04; 8:45 am]

BILLING CODE 3510-FF-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0327; FRL-7682-1]

#### Cyprodinil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on almond, hulls; bean, dry; bean, succulent; and leafy greens subgroup 4A, except spinach. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective October 20, 2004. Objections and requests for hearings must be received on or before December 20, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP-2004-0327. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 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.

#### FOR FURTHER INFORMATION CONTACT:

Maria I. Rodriguez, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6710; e-mail address: [rodriguez.maria@epa.gov](mailto:rodriguez.maria@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

##### II. Background and Statutory Findings

In the **Federal Register** of April 21, 2003 (68 FR 19528) (FRL-7301-6), EPA issued a notice pursuant to section

408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6530; note that this PP was inadvertently reported as PP 2E6530 in the unit entitled **Summary of Petition** of that notice) by IR-4, 681 U.S. Highway #1 South, New Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.532 be amended by establishing tolerances for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on almond, hulls at 8.0 parts per million (ppm). That notice included a summary of the petition prepared by IR-4, the registrant. There were no comments received in response to the notice of filing.

In the **Federal Register** of September 1, 2004 (69 FR 53436) (FRL-7676-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petitions (PP 3E6638 and PP 3E6700) by IR-4, 681 U.S. Highway #1 South, New Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.532 be amended by establishing a tolerance for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on leafy greens subgroup 4A, except spinach at 30 ppm (PP 3E6638); bean, dry and bean, succulent at 0.6 ppm each (PP 3E6700). That notice included a summary of the petition prepared by IR-4, the registrant. Comments were received from one individual in New Jersey opposing and objecting the establishment of tolerances for residues of cyprodinil. The individual criticized IR-4's involvement in the pesticide registration as well as EPA's way of conducting pesticide registration. EPA's response to the public comments received is in Unit V. of this document.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from

aggregate exposure to the pesticide chemical residue....”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

### III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of cyprodinil in or on almond, hulls at 8.0 ppm; bean, dry and bean, succulent at 0.6 ppm each; and leafy greens subgroup 4A, except spinach at 30 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyprodinil as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of September 19, 2003 (68 FR 54808) (FRL-7326-4).

#### B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is

routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: “Traditional uncertainty factors;” the “special FQPA safety factor;” and the “default FQPA safety factor.” By the term “traditional uncertainty factor,” EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term “special FQPA safety factor” refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The “default FQPA safety factor” is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate ( $RfD = NOAEL/UF$ ). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) =  $NOAEL/exposure$ ) is calculated and compared to the LOC.

The linear default risk methodology ( $Q^*$ ) is the primary method currently used by the Agency to quantify carcinogenic risk. The  $Q^*$  approach assumes that any amount of exposure will lead to some degree of cancer risk. A  $Q^*$  is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand ( $1 \times 10^{-5}$ ), one in a million ( $1 \times 10^{-6}$ ), or one in ten million ( $1 \times 10^{-7}$ ).

Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a “point of departure” is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ( $MOE_{cancer} = \text{point of departure}/\text{exposures}$ ) is calculated.

A summary of the toxicological endpoints for cyprodinil used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 19, 2003 (68 FR Page 54808) (FRL-7326-4).

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.532) for the residues of cyprodinil, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from cyprodinil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An unrefined, Tier 1 acute dietary exposure assessment (using tolerance-level residues, DEEM default processing factors and assuming 100% crop treated for all proposed commodities) was conducted for the females 13–49 years old population subgroup.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: An unrefined, Tier 1 chronic dietary

exposure assessment (using tolerance-level residues, DEEM default processing factors, and assuming 100% crop treated for all proposed commodities) was conducted for the general U.S. population and various population subgroups.

iii. *Cancer.* A quantitative cancer aggregate-exposure assessment was not performed because cyprodinil is not carcinogenic.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyprodinil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyprodinil.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are

calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyprodinil they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of cyprodinil for acute exposures are estimated to be 73 parts per billion (ppb) for surface water and 0.062 ppb for ground water. The EECs for chronic exposures are estimated to be 61 ppb for surface water and 0.062 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

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

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to cyprodinil and any other substances and cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at <http://www.epa.gov/pesticides/cumulative/>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCFA provides that EPA shall apply an

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

2. *Prenatal and postnatal sensitivity.* There are no concerns or uncertainties for pre- and/or post-natal exposure.

3. *Conclusion.* There is a complete toxicity data base for cyprodinil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The 10X default safety factor (SF) to protect infants and children has been reduced to 1X. The basis for the recommendation has been discussed in Unit III.D. of the final rule published in the **Federal Register** of September 19, 2003 (68 FR 54808) (FRL-7326-4).

#### E. Aggregate Risks and Determination of Safety

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

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult

female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of

exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to cyprodinil will occupy, 4% of the aPAD of 1.5 mg/kg/

day for females 13 to 49 years. For the general population, no toxic effects of concern that could be attributed to a single exposure were observed in the oral toxicity studies, including the developmental toxicity studies in rats and rabbits. Therefore, cyprodinil is not expected to pose an acute risk to this population subgroup. In addition, there is potential for acute dietary exposure to cyprodinil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1. of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CYPRODINIL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–49 years old)	1.5	4	73	0.062	43,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyprodinil from food will utilize 38% of the cPAD of 0.03 mg/kg/day for the U.S. population, and 67% of the cPAD for the most highly exposed

population subgroup, children 1–2 years old. There are no residential uses for cyprodinil that result in chronic residential exposure to cyprodinil. In addition, there is potential for chronic dietary exposure to cyprodinil in drinking water. After calculating

DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2. of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYPRODINIL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.03	38	61	0.062	650
Children (1–2 years old)	0.03	67	61	0.062	100

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

Cyprodinil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

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

Cyprodinil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, cyprodinil was classified as "not likely to be carcinogenic to humans." Therefore, cyprodinil is not expected to pose a cancer risk to humans.

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

**IV. Other Considerations**

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology is available to enforce the tolerance

expression. Head and leaf lettuce, lima bean, dry bean, and snap bean were analyzed using Novartis working method AG–631B. The method uses High Performance Liquid Chromatography (HPLC) with Column Switching. Almonds were analyzed using Syngenta tolerance enforcement method AG–631A. The method uses HPLC with Column Switching, with modifications. The confirmatory method uses HPLC with Ultraviolet detection (HPLC/UV). The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

*B. International Residue Limits*

Canada, Codex, and Mexico do not have maximum residue limits (MRLs)

for residues of cyprodinil in/on the proposed crops. Therefore, harmonization is not an issue.

#### V. EPA's Response to Public Comments Received Regarding the Notice of Filing

Comments were received from one individual in New Jersey opposing and objecting the establishment of tolerances for residues of cyprodinil. The individual criticized IR-4's involvement in the pesticide registration as well as EPA's way of conducting pesticide registration. The comments were in response to the notice of filing published in the **Federal Register** of September 1, 2004 (69 FR 53436) (FRL-7676-4).

One comment indicated that IR-4 and Rutgers University are profiteering by registering pesticides for Syngenta. The IR-4 program was created by Congress in 1963 in order to assist minor crop growers in the process of obtaining pesticide registrations. IR-4 National Coordinating Headquarters is located at Rutgers University in New Jersey and receives the majority (90%) of its funding from the USDA. It is the only publicly funded program that conducts research and submits petitions for tolerances. IR-4 operates in collaboration with USDA, the Land Grant University System, the agrochemical industry, commodity associations, and EPA. IR-4 identifies needs, prioritizes accordingly, and conducts research. The majority (over 80%) of IR-4's research is conducted on reduced-risk chemicals. Under the Pesticide Registration Improvement Act (PRIA), IR-4 works in cooperation with the registrant to request a waiver for the registration services. The waiver may be granted if the application is solely associated by simultaneous submission with a tolerance petition in connection with IR-4 and if it is in the public interest. This fee waiver serves as an incentive to pursue registration of minor uses supported by the IR-4 program. In addition to the work done in pesticide registration, IR-4 develops risk mitigation measures for existing registered products. Therefore, IR-4 and Rutgers University are not profiteering from registering pesticides.

Another comment alleged that according to information on the fifth page of the notice of filing, there is no data at EPA to support the pesticide registration. The comment applies to the use of "available data" concerning the cumulative effects of the pesticide's residues and "other substances that have a common mechanism of toxicity." In this case, EPA did not assume that this chemical has a common mechanism of toxicity with other substances as the

chemical does not generate metabolites produced also by other chemicals. For specific information regarding EPA's approach to the use of common mechanism of toxicity to evaluate the cumulative effects of chemicals, please refer to EPA's website at <http://www.epa.gov/pesticides/cumulative/> to see policy statements.

An additional comment indicated that during animal testing, rabbits are abused, tortured, and fed toxic chemicals. EPA test guidelines recommend rabbits as test animals in acute eye irritation studies as well as in longer term studies such as developmental toxicity and reproduction studies. Results obtained from studies conducted with animals (in general) are relevant to humans because cells and molecules of humans can be very similar to those of animals. Therefore, if a pesticide causes toxicity in animals, it is likely to do so in humans as well. EPA supports the use of the least possible number of animals in the pertinent studies. In addition, it should be noted that currently there are no *in vitro* studies that can address the concerns these studies satisfy. EPA is working with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) to investigate *in vitro* methods to determine the toxicological concerns associated with the use of pesticides.

#### VI. Conclusion

Therefore, the tolerances are established for residues of cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on almond, hulls at 8.0 ppm; bean, dry and bean, succulent at 0.6 ppm each; and leafy greens subgroup 4A, except spinach at 30 ppm.

#### VII. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new

section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

#### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2004-0327 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 20, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14<sup>th</sup> St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP-2004-0327, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**VIII. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal

Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**IX. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: October 6, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

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

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.532 is amended as follows:

■ a. By revising the commodity "Almond, hulls" in the table in paragraph (a).

■ b. By alphabetically adding commodities to the table in paragraph (a).

**§ 180.532 Cyprodinil; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
Almond, hulls .....	8.0
* * * * *	*
Bean, dry .....	0.6
Bean, succulent .....	0.6
* * * * *	*
Leafy greens subgroup 4A, ex- cept spinach .....	30
* * * * *	*

[FR Doc. 04-23261 Filed 10-19-04; 8:45 am]  
BILLING CODE 6560-50-S

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 310**

[Docket Number: MARAD-2004-19397]

RIN 2133-AB61

**Amended Service Obligation Reporting Requirements for State Maritime Academy Graduates**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** In this interim final rule, the Maritime Administration (MARAD, we, us, or our) will change the service obligation reporting requirements for State maritime academy graduates who receive Student Incentive Payments (SIPs). The new reporting requirements create standard reporting dates that coincide with the U.S. Naval Reserve/Merchant Marine Reserve (USNR/MMR) service reporting dates. This rulemaking also provides for the electronic submission of reports as the primary means of submission to MARAD.

**DATES:** This interim final rule is effective October 20, 2004. However, MARAD will consider comments received not later than November 19, 2004.

**ADDRESSES:** You may submit comments (identified by DOT DMS Docket Number MARAD-2004-19397) by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 7th St., 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 for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading 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 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Rita Jackson, Academies Program Officer, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7123, Washington, DC 20590, telephone: (202) 366-0284.

**SUPPLEMENTARY INFORMATION:** The Student Incentive Payment Program provides financial assistance to certain eligible State maritime academy students to help offset educational costs. Students who receive Student Incentive Payments must sign service obligation contracts that obligate the students to certain post-graduate service obligation requirements. The requirements include: (1) Serving for three (3) years after graduation in the foreign or domestic commerce or the national defense of the United States in maritime-related employment; (2) maintaining a valid license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages, and (3) accepting if tendered an appointment as, and serving as a commissioned officer in the United States Naval Reserve, the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States for six (6) years following graduation. The above requirements are set forth in 46 U.S.C. 1295c(g)(3)(C), (D), and (E). In addition to the above service obligations, graduates are required,

under 46 U.S.C. 1295c(g)(3)(F), to submit reports to MARAD indicating compliance with their service obligations.

Under the current regulations at 46 CFR 310.7(b)(6)(i), State maritime academy SIP graduates are required to submit their service obligation reports thirteen (13) months following graduation and each succeeding twelve (12) months for a total of three (3) years. The three (3) year reporting period, however, does not accurately reflect the requirement in 46 U.S.C. 1295c(g)(3)(F) that graduates report compliance with all of their service obligations, because graduates must submit reports indicating their compliance not only with the three (3) year service (*i.e.*, employment) requirement, but also with the six (6) year licensing and reserve components of the service obligation. Thus, under the law, graduates must submit compliance reports for a minimum of six (6) years to account for all of their service obligations. The six (6) year reporting requirement dates back to the Maritime Education and Training Act of 1980 (Pub. L. 96-453) but has not been reflected in MARAD's regulations. However, as a matter of agency practice, MARAD has long required graduates to submit reports for six (6) years to report compliance with their service obligation requirements.

In this interim final rule, MARAD is amending its regulations to reflect the requirement that graduates report for six (6) years (or until all components of the service obligation are fulfilled, whichever is latest). In addition, MARAD is amending the service obligation reporting requirements to require each graduate to file a report between January 1 and March 1 following graduation and during the same January 1 to March 1 time frame for a minimum of six (6) years thereafter.

The new reporting dates coincide with the USNR/MMR's service reporting dates to create a standard reporting period. This standardized reporting period should make reporting less burdensome because graduates will be able to compile and submit information to MARAD and to the USNR during the same time frame each year.

This rulemaking will also provide for the electronic submission of reports as the primary means of submission. Graduates must submit annually the Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report (Form MA-930). Graduates may submit their Service Obligation Compliance Reports electronically via the Maritime Service

Compliance System at <https://mscs.marad.dot.gov>.

### Regulatory Analyses and Notices

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This interim final rule is not likely to result in an annual effect on the economy of \$100 million or more. This interim final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and economic impact associated with this rulemaking are considered to be so minimal that no further analysis is necessary. This interim final rule merely changes the reporting requirements for submission of service obligation report forms to make reporting less burdensome, amends the number of report submissions to conform to requirements set forth in the U.S. Code, and provides the option of electronic submission of such reports to MARAD.

#### *Administrative Procedure Act*

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B), good cause exists for not providing notice and comment since this interim final rule only changes the service obligation reporting dates of state maritime academy graduates who receive SIP payments to make reporting less burdensome, amends the number of report submissions to conform to requirements set forth in the U.S. Code, and provides the option of electronic submission of such reports to MARAD.

Under 5 U.S.C. 553(d)(3), MARAD finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. However, MARAD will accept comments submitted on or before the date indicated in the **DATES** section.

#### *Regulatory Flexibility Act*

The Maritime Administrator certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. This interim final rule only changes the service obligation reporting requirements for state maritime academy graduates who receive SIP

payments. Thus, this rule only affects individuals and not businesses or other entities.

#### *Federalism*

We have analyzed this interim final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials is not necessary.

#### *Executive Order 13175*

MARAD does not believe that this interim final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

#### *Environmental Impact Statement*

We have analyzed this interim final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this interim final rule is required. This interim final rule involves administrative and procedural regulations that have no environmental impact.

#### *Unfunded Mandates Reform Act of 1995*

This interim final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This interim final rule is the least burdensome alternative that achieves this objective of U.S. policy.

#### *Paperwork Reduction Act*

This interim final rule contains information collection requirements

covered by the Office of Management and Budget approval number 2133-0509. The changes have no impact on the reporting burden.

#### **List of Subjects in 46 CFR Part 310**

Federal Aid Programs, Reporting and recordkeeping requirements, Schools, and Seamen.

■ Accordingly, for the reasons discussed in the preamble, 46 CFR part 310 is amended as follows:

#### **PART 310—MERCHANT MARINE TRAINING**

■ 1. The authority citation for part 310 continues to read as follows:

**Authority:** 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. Amend § 310.7 by revising paragraph (b)(6) to read as follows:

#### **§ 310.7 Federal student subsistence allowances and student incentive payments.**

\* \* \* \* \*

(b) \* \* \*

(6) *Reporting requirement.* (i) The schools must promptly submit copies of all resignation forms (containing the name, reason, address and telephone number) of juniors and seniors to the Supervisor, to be used for monitoring and enforcement purposes. Each graduate must submit an annual Service Obligation Compliance Report form (MA-930) to the Maritime Administration (Supervisor) between January 1 and March 1 following his or her graduation. After the initial report is submitted, each graduate must continue to submit annual reports during the same time frame between January 1 and March 1 for six (6) consecutive years thereafter, or until all components of the service obligation are fulfilled, whichever is latest. Each graduate will file a minimum of seven (7) reports in order to give information on all six (6) years of the armed forces reserve and merchant marine officer license service obligations. Graduates are encouraged to submit their Service Obligation Compliance Report forms (MA-930) to MARAD using the web-based Internet system at <https://mscs.marad.dot.gov>. Reports may also be mailed to: Compliance Specialist, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7123, Washington, DC 20590. In case a deferment has been granted to engage in a maritime-related graduate course of study, annual reports must be submitted during the extension period resulting from such deferments. Examples of the reporting requirements are as follows.

*Example 1:* Midshipman graduates on June 30, 2004. His or her first reporting date is between January 1, 2005 and March 1, 2005 and each following period between January 1 and March 1 for six (6) consecutive years thereafter (or until all components of the service obligation are fulfilled, whichever is latest) for a minimum of seven (7) reports.

*Example 2:* Midshipman has a deferred graduation on November 30, 2004. His or her first reporting date is between January 1, 2005 and March 1, 2005 and each following period between January 1 and March 1 for six (6) consecutive years thereafter (or until all components of the service obligation are fulfilled, whichever is latest) for a minimum of seven (7) reports.

*Example 3:* Midshipman has a deferment following graduation on June 30, 2004, to attend graduate school for two (2) years. His or her first reporting date is between January 1, 2005 and March 1, 2005 and during the same time frame between January 1 and March 1 for two (2) years during graduate school, and then during the same January 1 to March 1 time frame for six (6) consecutive years thereafter (or until all components of the service obligation are fulfilled, whichever is latest) for a total of nine (9) reports.

(ii) The Maritime Administration will provide reporting forms. However, non-receipt of such forms will not exempt a graduate from submitting information as required by this paragraph. The reporting form has been approved by the Office of Management and Budget (2133-0509).

\* \* \* \* \*

By Order of the Maritime Administrator.

Dated: October 13, 2004.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04-23362 Filed 10-19-04; 8:45 am]

BILLING CODE 4910-81-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 031124287-4060-02; I.D. 101504A]

**Fisheries of the Exclusive Economic Zone Off Alaska; "Other Species" in the Bering Sea and Aleutian Islands**

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

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of "other species" in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of "other species" in this area be treated in

the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2004 total allowable catch (TAC) of "other species" in this area has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 16, 2004, until 2400 hrs, A.l.t., December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 2004 TAC of "other species" in the BSAI was established as 23,124 metric tons by the final 2004 harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the "other species" TAC in the BSAI has been reached. Therefore, NMFS is requiring that further catches of "other species" in the BSAI be treated as a prohibited species in accordance with § 679.21(b). "Other species" includes sculpins, sharks, skates and octopus.

**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 a 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 prohibition of retention of "other species" in the BSAI.

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: October 15, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. 04-23478 Filed 10-15-04; 2:57 pm]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 031124287-4060-02; I.D. 101504B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Reallocation of Pacific cod.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl and jig gear to vessels using hook-and-line and pot gear in the BSAI. These actions are necessary to allow the 2004 total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective October 15, 2004, until 2400 hours, A.l.t., December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC as 199,338 metric tons (mt). Pursuant to § 679.20(a)(7)(i)(A), 3,987 mt was allocated to vessels using jig gear, 101,662 mt to vessels using hook-and-line or pot gear, and 93,689 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to

catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 3.3 percent to catcher/processor vessels using pot gear; 15 percent to catcher vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)(C)).

On April 7, 2004, 1,545 mt of Pacific cod from the A season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear (69 FR 19116, April 12, 2004).

As of October 7, 2004, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 5,700 mt and trawl catcher vessels will not be able to harvest 7,000 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(2), NMFS apportions 12,700 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

The Regional Administrator has also determined that vessels using jig gear

will not harvest 2,000 mt of their Pacific cod allocation by the end of the year. Also, catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest any additional Pacific cod. Therefore, in accordance with § 679.20(a)(7)(ii)(C)(1) and § 679.20(a)(7)(ii)(B), NMFS is reallocating the unused amount of 2,000 mt of Pacific cod allocated to vessels using jig gear to catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004) are revised as follows: 442 mt to vessels using jig gear, 94,995 mt to catcher/processor vessels using hook-and-line gear, 15,695 mt to catcher vessels using pot gear, 3,452 mt to catcher processor vessels using pot gear, 41,144 mt to catcher/processor vessels using trawl gear, and 39,844 mt to catcher vessels using trawl gear.

#### 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 a 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 reallocation of Pacific cod specified for trawl and jig vessels to vessels using hook-and-line and pot gear in the BSAI and therefore would cause disruption to the industry by requiring unnecessary closures, disruption within the fishing industry, and the potential for regulatory discards when the current allocations are reached. This reallocation will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

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: October 15, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. 04-23467 Filed 10-15-04; 2:57 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 69, No. 202

Wednesday, October 20, 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 AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1755

#### RUS Specification for Telecommunications Cable Splicing Connectors

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction, by revising, renumbering, and renaming RUS Bulletin 345-54, "RUS Specification for Telephone Cable Splicing Connectors, PE-52." The revised specification updates the relevant engineering and technical requirements for telecommunications splicing connectors including provisions for mechanical fiber-optic splicing connectors.

**DATES:** Written comments must be received by RUS or be postmarked no later than December 20, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Agency Web site:* <http://www.usda.gov/rus/index2/Comments.htm>. Follow the instructions for submitting comments.

- *E-mail:* [RUSComments@usda.gov](mailto:RUSComments@usda.gov). Include in the subject line of the message "Specification for Telecommunications Cable Splicing Connectors."

- *Mail:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522.

- *Hand Delivery/Courier:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250-1522.

*Instructions:* All submissions received must include that agency name and the subject heading "Specification for Telecommunications Cable Splicing Connectors". All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to <http://www.usda.gov/rus/index2/Comments.htm>, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Norberto Esteves, Chief, Technical Support Branch, Advance Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598, telephone (202) 720-0699 or e-mail: [Norberto.Esteves@usda.gov](mailto:Norberto.Esteves@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule is exempted from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866 and, therefore has not been reviewed by OMB.

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

##### Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*), and therefore, the Regulatory Flexibility Act does not apply to this rule. This proposed rule involves standards and specifications, which may increase the short-term direct costs to the RUS borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

##### Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this proposed rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572-0059.

##### National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

##### Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans, and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512-1800.

##### Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. *See* the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) excludes RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

**Unfunded Mandates**

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

**Executive Order 13132**

This proposed regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this proposed rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

**Background**

RUS regularly publishes and updates telecommunications “bulletins,” which guide telecommunications borrowers through codified policies, procedures, and requirements for RUS grant, loan, and loan guarantee programs. Such bulletins contain, for example, standards and specifications for the construction of telecommunications facilities financed with RUS grants, loans, and/or loan guarantees. RUS herein proposes the revision, renumbering, and renaming of RUS Bulletin 345–54 (PE–52), “RUS Specification for Telephone Cable Splicing Connectors” (hereinafter “RUS Bulletin 3452–54”) in order to reflect recent technological changes and to conform to the existing numbering system of the agency. The proposed bulletin would become RUS Bulletin 1755F–402 (PE–52), “RUS Specification for Telecommunications Cable-Splicing Connectors” (hereinafter “RUS Bulletin 1755F–402.”)

At present, RUS Bulletin 345–54 contains certain mechanical and environmental requirements, desired design features, and test methods for the evaluation of copper cable-splicing connectors. The current specification, however, does not address the mechanical, electrical, and environmental reliability of “fiber-optic” splicing connectors, given that at the time the spec was written, no such technology existed. But because of technological advances in the production of such connectors over the past 25 years, and in the test methods of their functional reliability, the current specifications have become outdated. Recognizing the technological innovations in fiber-optic technology and that RUS borrowers provide telecommunications using fiber-optics, the current specification has been revised to allow RUS borrowers to take advantage of the improvements in connector production and in the test methods available for fiber-optic cable-splicing connectors. Specifically, proposed RUS Bulletin 1755F–402 includes end-product performance requirements and test methods to evaluate the mechanical, electrical, and environmental reliability of fiber-optic splicing connectors designed for use with fiber-optic systems.

On September 24, 1998, RUS had published a proposed rule in the **Federal Register** at 63 FR 51018 intending to rescind RUS Bulletin 345–54, and to codify the revised specification at § 1755.521 of this part instead. Comments to the proposed rule were due on November 23, 1998. Only one comment, however, was received. The sole commenter recommended that RUS use the latest issuance of two American Society for Testing and Materials (ASTM) specifications referenced in the proposed rule; specifically asking that ASTM G 21–90 be changed to ASTM G 21–96 (Standard

Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi), and that ASTM A 276–91a be changed to ASTM A 276–98a (Standard Specification for Stainless Steel Bars and Shapes). RUS agreed with that recommendation and made the applicable changes to the ASTM standards referenced by the commenter. However, in response to those ASTM changes, as well as other changes made to the specification since the last comment period, RUS has decided to revise, renumber, and rename RUS Bulletin 345–54, instead of codifying the changes into § 1755.521 of this part as intended in 1998. As such, RUS has decided to republish proposed RUS Bulletin 1755F–402 to allow interested parties to comment on the subsequent changes that were made.

**List of Subjects in 7 CFR Part 1755**

Loan programs-telecommunications, Reporting and recordkeeping requirement, Rural areas, Telecommunications.

For reasons set out in the preamble, RUS proposes to amend Chapter XVII of Title 7 of the Code of Federal Regulations to read as follows:

**PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION.**

1. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1755.97 is amended by removing the entry “RUS Bulletin 345–54” from the table and adding, in numerical order, the new entry “1755F–402” to read as follows:

**§ 1755.97 Incorporation by reference of telecommunications standards and specifications.**

\* \* \* \* \*

RUS bulletin No.	Specification No.	Date last issued	Title of standard or specification
* * * * *	* * * * *	* * * * *	* * * * *
1755–402 .....	PE–52 .....	[Effective date of final rule] .....	RUS specification for telecommunications splicing connectors.
* * * * *	* * * * *	* * * * *	* * * * *

Dated: October 1, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04-23477 Filed 10-19-04; 8:45 am]

BILLING CODE 3410-15-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 83-ANE-14-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) Model HC-B3TN-2, HC-B3TN-3, HC-B3TN-5, HC-B4TN-3, HC-B4TN-5, HC-B4MN-5, and HC-B5MP-3 Turbopropellers**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to revise an existing airworthiness directive (AD) for Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) models HC-B3TN-2, HC-B3TN-3, HC-B3TN-5, HC-B4TN-3, HC-B4TN-5, HC-B4MN-5, and HC-B5MP-3 turbopropellers. That AD currently requires, before further flight, that all new propellers being installed and all serviceable propellers being reinstalled, are attached using part number (P/N) B-3339 bolts and P/N A-2048-2 washers, and that the bolts are properly torqued. That AD also currently requires a one-time torque-check of P/N A-2047 bolts that are already installed through propellers and replacement of those bolts if necessary, with P/N B-3339 bolts and P/N A-2048-2 washers. This proposed AD would require the same actions. This proposed AD results from the need to make nonsubstantive wording changes and additions to clarify that terminating action is achieved by attaching propellers with P/N B-3339 bolts and P/N A-2048-2 washers to the engine flange, as instructed in the compliance section of this AD. This proposed AD does not require an additional one-time torque-check of P/N A-2047 bolts. Also, this proposed AD does not apply to propellers installed using P/N B-3339 bolts and P/N A-2048-2 washers. We are proposing this AD to preclude propeller attaching bolt failures or improperly secured propellers, which could lead to separation of the propeller from the airplane.

**DATES:** We must receive any comments on this proposed AD by December 20, 2004.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-ANE-14-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

- *By fax:* (781) 238-7055.

- *By e-mail:* 9-ane-adcomment@faa.gov.

You can get the service information identified in this proposed AD from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778-4200; fax (937) 778-4391.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Melissa T. Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294-8110; fax: (847) 294-7834.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 83-ANE-14-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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 that affect you. You can get more information about plain language at <http://www.faa.gov/language> and <http://www.plainlanguage.gov>.

#### **Examining the AD Docket**

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

#### **Discussion**

Since we published the existing AD 83-08-01R1 (Amendment 39-4633, 48 FR 17576, April 25, 1983), numerous inquiries from the FAA field and industry have been presented to the Chicago Aircraft Certification Office (ACO) regarding replacement of propeller attaching bolts. On July 10, 1992, that office distributed a letter through the Flight Standards District Office that stated the following:

- The intent of AD 83-08-01R1 is not to require replacement or imply life limits of bolts P/N B-3339 and washers P/N A-2048-2, when a propeller is reinstalled, removed, or replaced.

- Bolt replacement at time of propeller installation is only required when a different part number bolt was previously installed.

- If the current FAA-approved bolt P/N B-3339 can pass inspection and meet required torque limit, the bolt is reusable.

- Installing bolts P/N B-3339 is terminating action for AD 83-08-01R1.

#### **FAA's Actions and Requirements Since the ACO Letter Was Issued**

Despite that letter distribution, we are still receiving inquiries on the intent of AD 83-08-01R1. This proposed AD would revise AD 83-08-01R1 by making nonsubstantive wording changes and additions to clarify that replacement of the previous P/N bolts, P/N A-2047, and related washers, with P/N B-3339 bolts and P/N A-2048-2 washers, must be done when new propellers are being installed and when serviceable propellers are being reinstalled. Doing these actions is considered terminating action to the AD. This proposed AD revision is being issued to preclude propeller attaching bolt failures or improperly secured propellers, which could lead to separation of the propeller from the airplane.

#### **Costs of Compliance**

There are about 17,000 Hartzell Propeller Inc. models HC-B3TN-2, HC-B3TN-3, HC-B3TN-5, HC-B4TN-3, HC-B4TN-5, HC-B4MN-5, and HC-B5MP-3 turbopropellers of the affected design in the worldwide fleet. We estimate that 11,900 turbopropellers installed on airplanes of U.S. registry would be affected by this proposed AD.

We also estimate that all of these propellers likely would have upgraded to the P/N B-3339 bolts and P/N A-2048-2 washers since issuance of the original AD. The average labor rate is \$65 per work hour. Bolt replacement would require about 1.5 work hours. Required parts would cost approximately \$260 per propeller. Based on these figures, we estimate the cost of the proposed AD to replace the bolts for one propeller to be \$357.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 83-ANE-14-AD" in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 39-4633 (48 FR 17576, April 25, 1983) and by adding the following new airworthiness directive (AD), to read as follows:

**Hartzell Propeller Inc. (formerly TRW Hartzell Propeller):** Docket No. 83-ANE-14-AD. Revises AD 83-08-01R1, Amendment 39-4633.

**Applicability:** This AD is applicable to Hartzell Propeller Inc. (formerly TRW Hartzell Propeller) models HC-B3TN-2, HC-B3TN-3, HC-B3TN-5, HC-B4TN-3, HC-B4TN-5, HC-B4MN-5, and HC-B5MP-3 turbopropellers. The HC-B()TN-2, HC-B()TN-3, and HC-B()MP-3 propellers are installed on Pratt & Whitney Canada Model PT6A-() series engines. The HC-B()TN-5 and HC-B()MN-5 series propellers are installed on Honeywell International Inc., (formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AIRResearch Manufacturing Company of Arizona) TPE-331-() series engines.

**Note 1:** This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been

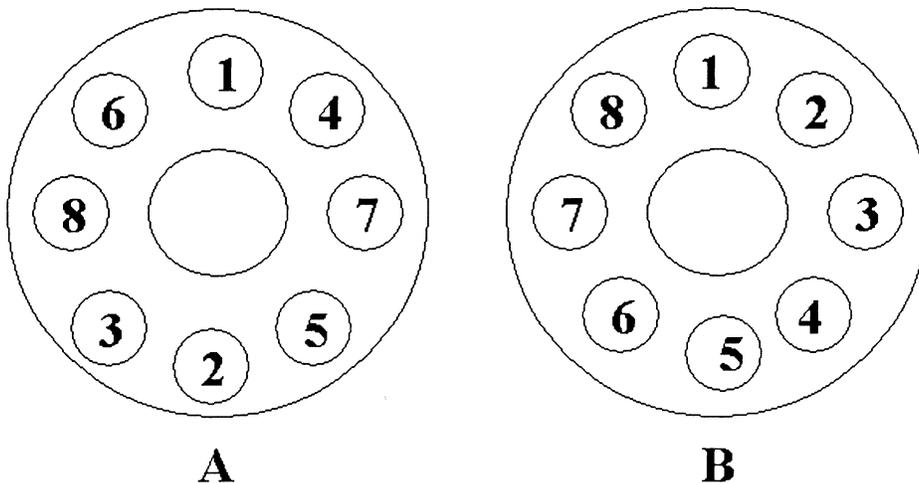
modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD are affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To preclude propeller attaching bolt failures or improperly secured propellers, which could lead to separation of the propeller from the airplane, do the following:

- (a) Install all new propellers and serviceable propellers that are being reinstalled, as follows, before further flight:
  - (1) Install the propeller oil seal to the engine flange after ensuring that the engine and propeller flanges are clean.
  - (2) Carefully install propeller on the engine flange ensuring that complete and true contact is established.
  - (3) Apply MIL-T-5544 Petrolated Graphite or Hartzell Lubricant part number (P/N) A3338 to threads of eight P/N B-3339 attaching bolts (and remainder of bolt if desired) and to flat surfaces of eight P/N A-2048-2 washers.
  - (4) Install the eight P/N B-3339 attaching bolts and eight P/N A-2048-2 washers that were prepared in paragraph (a)(3) of this AD, through the engine flange and into the propeller flange.
  - (5) Torque all attaching bolts with a torque wrench and an appropriate adapter, to 40 ft.-lbs., and then to 80 ft.-lbs. Following sequence "A" (shown below). Final torque all attaching bolts using sequence "B" (shown below) to 100 to 105 ft.-lbs. Safety wire all attaching bolts in an FAA-approved manner.

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(6) Once the propeller is installed with P/N B-3339 bolts and P/N A-2048-2 washers, this AD no longer applies.

(b) Within the next 300 hours time-in-service after the effective date of this AD, do the following on all applicable turbopropellers presently installed with P/N A-2047 attaching bolts:

(1) Check the torque, with a torque wrench and an appropriate adapter, of all eight propeller attaching bolts (with washers installed). Torque should be 100 to 125 ft.-lbs., with dry threads. (Caution: Do not use any lubricant with the P/N A-2047 bolts. Safety wire all bolts in an FAA-approved manner.)

(2) If the torque of any one of the bolts is found to be less than 100 ft.-lbs., remove all eight bolts and washers and replace with P/N B-3339 bolts and P/N A-2048-2 washers using paragraphs (a)(1) through (a)(5) of this AD.

(3) A P/N A-2047 bolt has the letter "H" stamped inside a triangle on the bolt. A P/N B-3339 bolt has the P/N stamped inside the cupped head.

(4) If the torque of each P/N A-2047 bolt is in compliance, then at next propeller disassembly, remove all eight bolts and washers and replace with P/N B-3339 bolts and P/N A-2048-2 washers. Use paragraphs (a)(1) through (a)(5) of this AD to do the replacements.

(5) Hartzell Service Instructions No. 140A, Revision 8, dated April 6, 2004, is the latest service information that pertains to the subject of this AD.

#### Alternative Methods of Compliance

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

#### Special Flight Permits

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

Issued in Burlington, Massachusetts, on October 12, 2004.

**Jay J. Pardee,**

Manager, Engine and Propeller Directorate,  
Aircraft Certification Service.

[FR Doc. 04-23366 Filed 10-19-04; 8:45 am]

**BILLING CODE 4910-13-C**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 10

RIN 1024-AC84

#### Native American Graves Protection and Repatriation Act Regulations—Future Applicability

**AGENCY:** Department of the Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule and request for comments relates to one section of regulations implementing the Native American Graves Protection and Repatriation Act of 1990 ("the Act"). This section outlines procedures for the future applicability of the Act to museums and Federal agencies. Publication of this section is intended to solicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and members of the public prior to its publication in final form.

**DATES:** Written comments will be accepted until January 18, 2005.

**ADDRESSES:** Comments (2 copies) should be addressed to: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, RIN 1024-AC84, 1849 C Street NW., (2253), Washington, DC 20240-0001, or hand deliver comments to 1201 Eye Street NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW., (2253), Washington, DC 20240-0001. Telephone: (202) 354-2209. Fax: (202) 371-5197.

**SUPPLEMENTARY INFORMATION:** On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*), hereafter referred to as the Act. The Act addresses the rights of lineal descendants, Indian Tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects and objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to promulgate regulations to carry out provisions of the Act.

Regulations implementing the Act were published as final in the **Federal Register** on December 4, 1995. 60 FR 62, 158 (Dec. 4, 1995), codified as 43 CFR part 10. Five sections were reserved in the final regulations with the intention that they would be published in the

future. This proposed rule for § 10.13 develops procedures regarding the future applicability of the Act to museums and Federal agencies.

This rule proposes to clarify the applicability of the Act to museums and Federal agencies following the statutory deadlines for completion of summaries and inventories. The Act requires museums and Federal agencies, as defined by the Act, to provide summaries of their collections to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collection by November 16, 1993. The Act also requires museums and Federal agencies to prepare, in consultation with culturally affiliated Indian tribes and Native Hawaiian organizations, inventories of human remains and associated funerary objects by November 16, 1995. The Act also requires museums and Federal agencies to submit notices for publication in the **Federal Register** prior to repatriation. Four types of situations are anticipated where a museum or Federal agency may fall under the jurisdiction of the Act after the statutory deadlines: (1) The museum or Federal agency receives new collections; (2) a previously unrecognized Indian group is recognized as an Indian tribe; (3) an institution in possession or control of Native American human remains, funerary objects, sacred objects or objects of cultural patrimony receives Federal funds for the first time; and (4) the museum or Federal agency revises a decision previously published in the **Federal Register**. In each case the proposed rule establishes deadlines for the required summaries, inventories, or notices.

#### Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon analysis of the comments.

Copies of this proposed rule may be obtained by submitting a request to the Manager, National NAGPRA Program, National Park Service, at the address noted at the beginning of this rulemaking. Commentors wishing the National Park Service to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

“Comments to RIN 1024-AC84.” The postcard will be date stamped and returned to the commentor.

#### Drafting Information

This final rule was prepared by Dr. C. Timothy McKeown (National NAGPRA Program) and Dr. Francis P. McManamon (Archeology and Ethnography Program), in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

#### Compliance With Laws, Executive Orders, and Departmental Policy

##### *Regulatory Planning and Review (Executive Order 12866)*

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

1. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients.

4. This rule does not raise novel legal or policy issues.

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or

tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

##### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. Museums are only required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony for which they can not prove right of possession [25 U.S.C. 3005(c)].

##### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required.

##### *Civil Justice Reform (Executive Order 12988)*

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

##### *Paperwork Reduction Act*

The collection of information contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. Public reporting burden for this collection of information is expected to average 20 hours for the exchange of summary/inventory information between a museum and an Indian tribe and six hours per response for the notification to the Secretary of the Interior, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Attn: RIN 1024-AC84, National Park Service, Department of Interior Building, 1849 C Street NW., Room 3317, Washington DC 20240, and the Office of Management and Budget, Office of Information and

Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Washington, DC 20503.

##### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

##### *Government-to-Government Relationship With Tribes*

In accordance with Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249), the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), and 512 DM 2 we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. NAGPRA makes provisions for the return to lineal descendants, Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Native American organizations participated in the drafting of this rule.

##### *Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A “section” appears in bold type and is preceded by the symbol “§” and a numbered heading; for example, § 10.13 Future Applicability.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to: [Exsec@os.doi.gov](mailto:Exsec@os.doi.gov).

**List of Subjects in 43 CFR Part 10**

Administrative practice and procedure, Graves, Hawaiian Natives, Historic preservation, Indians-claims, Museums, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR subtitle A as follows:

**PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS**

1. The authority citation for part 10 continues to read as follows:

**Authority:** 25 U.S.C. 3001 *et seq.*

2. Section 10.13 is added to read as follows:

**§ 10.13 Future applicability.**

(a) *General.* This section sets forth the applicability of the Act to museums and Federal agencies after expiration of the statutory deadlines for completion of summaries and inventories.

(b) *New collections.* (1) Any museum or Federal agency that, after completion of the summaries and inventories required pursuant to § 10.8 and § 10.9 of these regulations, receives a new collection or locates a previously unreported current collection that may include human remains, funerary objects, sacred objects or objects of cultural patrimony, must:

(i) Within six months of receiving a new collection or locating a previously unreported current collection, provide a summary of the collection pursuant to § 10.8 of these regulations to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collection; and

(ii) Within two years of receiving a new collection or locating a previously unreported current collection, prepare, in consultation with any culturally affiliated Indian tribe or Native Hawaiian organization, an inventory pursuant to § 10.9 of these regulations.

(2) Additional pieces or fragments of previously repatriated human remains, funerary objects, sacred objects and objects of cultural patrimony may be returned to the appropriate Indian tribe or Native Hawaiian organization without publication of a notice in the **Federal Register**, as otherwise required under § 10.8(f) and § 10.9(e), if they do not constitute a substantive change in the notice published at the time of the original repatriation. For example, repatriation of newly found sherds from a previously repatriated funerary bowl would not require a new **Federal Register** notice, while another

previously unreported ceramic vessel from the same burial site would require a new **Federal Register** notice prior to repatriation.

(c) *New Indian tribes.* (1) Any museum or Federal agency that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with a previously non-Federally recognized Native American group, must:

(i) Within six months of the publication in the **Federal Register** of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, provide a summary of the collection pursuant to § 10.8 of these regulations to that Indian tribe; and

(ii) Within two years of the publication in the **Federal Register** of the Native American group's placement on the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, prepare, in consultation with the newly recognized culturally affiliated Indian tribe an inventory pursuant to § 10.9 of these regulations.

(2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs is published in the **Federal Register** pursuant to provisions of the Federally Recognized Indian Tribe List Act of 1994 [Pub. L. 103-454, 108 Stat. 4791].

(d) *New Federal funds.* Any museum that has possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds for the first time after expiration of the statutory deadlines for completion of summaries and inventories must:

(1) Within three years of the date of receipt of Federal funds, provide a summary of the collection pursuant to § 10.8 of these regulations to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with the collections; and

(2) Within five years of the date of receipt of Federal funds, prepare, in consultation with any culturally affiliated Indian tribe or Native Hawaiian organization, an inventory pursuant to § 10.9 of these regulations.

(e) *Amendment of previous decision.* (1) Any museum or Federal agency that has previously published a notice in the **Federal Register** regarding the intent to repatriate unassociated funerary objects, sacred objects, and objects of cultural patrimony pursuant to § 10.8(f), or the completion of an inventory of Native American human remains and

associated funerary objects pursuant to § 10.9(e), must publish an amendment to that notice if, based on subsequent information, the museum or Federal agency revises its decision in a way that changes the number or cultural affiliation of the cultural items listed.

(2) Repatriation may not occur until at least thirty (30) days after publication of the amended notice in the **Federal Register**.

(f) All actions taken pursuant to this section must also comply with all other relevant sections of 43 CFR 10.

Dated: September 24, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-23179 Filed 10-19-04; 8:45 am]

**BILLING CODE 4310-70-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 04-3172; MB Docket No. 04-388, RM-11089; MB Docket No. 04-389, RM-11090; MB Docket No. 04-390, RM-11091; MB Docket No. 04-391, RM-11092]

**Radio Broadcasting Services; Blythe, CA; Boyce, LA; Celoron, NY; and Wells, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth four proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Linda A. Davidson. Petitioner proposes the allotment of Channel 239B at Blythe, California, as a second local FM allotment. Channel 239B can be allotted at Blythe in compliance with the Commission's minimum distance separation requirements without site restriction at center city coordinates. The proposed coordinates for Channel 239B at Blythe are 33-37-02 North Latitude and 114-35-20 West Longitude. The proposed allotment is located within 320 kilometers (199 miles) of the United States-Mexico border, so it will be necessary to obtain concurrence in the allotment from the Government of Mexico. See Supplementary Information *infra*.

**DATES:** Comments must be filed on or before November 29, 2004, and reply comments on or before December 14, 2004.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, California 90405; Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; and Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04-388, 04-389, 04-390, 04-391, adopted October 6, 2004, and released October 8, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>.

The Commission further requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 222A at Boyce, Louisiana, as a second local FM allotment. Channel 222A can be allotted at Boyce in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 kilometers (8.0 miles) southwest of Boyce. The proposed coordinates for Channel 222A at Boyce are 31-18-54 North Latitude and 92-46-22 West Longitude.

The Commission further requests comment on a petition filed by Dana J. Puopolo. Petitioner proposes the allotment of Channel 237A at Celoron, New York, as a first local FM allotment. Channel 237A can be allotted at Celoron in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.4 kilometers (0.2 miles) southeast of Celoron. The proposed coordinates for Channel 237A at Celoron are 42-06-24 North Latitude and 79-16-53 West Longitude. The proposed allotment is located within 320 kilometers (199 miles) of the United States-Canada border, so it will be necessary to obtain concurrence in the allotment from the Government of Canada.

The Commission further requests comment on a petition filed by Charles

Crawford. Petitioner proposes the allotment of Channel 254A at Wells, Texas, as a second local FM allotment. Channel 254A can be allotted at Wells in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.6 kilometers (1.0 miles) west of Wells. The proposed coordinates for Channel 254A at Wells are 31-29-35 North Latitude and 94-57-20 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 239B at Blythe.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 222A at Boyce.

4. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Celoron, Channel 237A.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 254A at Wells.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-23457 Filed 10-19-04; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-3174, MB Docket No. 04-386, RM-10817]

### Radio Broadcasting Services; Leesville and New Llano, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a Petition for Rule Making filed by Charles Crawford requesting the allotment of Channel 252C3 at New Llano, Louisiana, as the community's first local aural transmission service. Channel 252C3 can be allotted to New Llano in compliance with the Commission's rules provided there is a site restriction of 10 kilometers (6.2 miles) north of New Llano. The proposed reference coordinates for Channel 252C3 at New Llano are 31-12-18 North Latitude and 93-16-11 West Longitude. To accommodate this allotment, this document also proposes the substitution of Channel 224A for vacant FM Channel 252A at Leesville, Louisiana. Channel 224A can also be allotted to Leesville in compliance with the Commission's rules provided there is a site restriction of 12.6 kilometers (7.8 miles) east of Leesville. The proposed reference coordinates for Channel 224A at Leesville are 31-07-40 North Latitude and 93-08-03 West Longitude. Channel 224A at Leesville is currently listed in the FM Table of Allotments, however, that channel was substituted for Channel 228C3 at Leesville in MM Docket No. 98-191, and the license of Station KJAE(FM) was modified accordingly. See *Leesville, Louisiana*, 64 FR 31140, published June 10, 1999.

**DATES:** Comments must be filed on or before November 29, 2004, and reply comments on or before October 8, 2004.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 04-386, adopted October 6, 2004, and released October 8, 2004. The full text

of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 Twelfth Street, SW., Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 252A at Leesville and by adding New Llano, Channel 252C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-23458 Filed 10-19-04; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 04-3171; MB Docket No. 04-387; RM-11083]

#### Radio Broadcasting Services; Cedarville, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Jeffrey Cotton requesting the allotment of Channel 260A at Cedarville, California as that community's first local service. The coordinates for Channel 260A at Cedarville are 41-31-45 NL and 120-10-20 WL located at the center of the community.

**DATES:** Comments must be filed on or before November 29, 2004, and reply comments on or before December 14, 2004.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Jeffrey Cotton, Route 60-5b, Lake City, California 96115.

**FOR FURTHER INFORMATION CONTACT:** Helen McLean, Media Bureau, (202) 418-2738.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04-387, adopted October 6, 2004, and released October 8, 2004. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Cedarville, Channel 260A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-23459 Filed 10-19-04; 8:45 am]

**BILLING CODE 6712-01-P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Motor Carrier Safety Administration

#### 49 CFR Part 386

[FMCSA Docket No. FMCSA-1997-2299]

RIN 2126-AA15

#### Rules of Practice

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

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** FMCSA proposes to amend its rules of practice for motor carrier safety, hazardous materials, and other enforcement proceedings. These rules would increase the efficiency of the procedures, enhance due process and the awareness of the public and regulated community, and accommodate recent programmatic changes. The rules would apply to all motor carriers, other business entities, and individuals involved in motor carrier safety and hazardous materials administrative actions and proceedings with FMCSA.

**DATES:** Comments must be received on or before December 6, 2004.

**ADDRESSES:** You may submit comments, identified by DOT DMS Docket Number

FMCSA-1997-2299, 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:** Jackie Cho, Office of Chief Counsel, (202) 366-0834, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 8 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 29, 1996, the Federal Highway Administration (FHWA), an operating administration of the DOT, published a notice of proposed rulemaking (NPRM) for Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties (1996 NPRM) (61 FR 18865).

In the 1996 NPRM, the FHWA, the relevant portion of which is now the Federal Motor Carrier Safety Administration, proposed entirely eliminating the rules of practice contained in part 386 and replacing them with new rules of practice in a new part 363.

The 1996 NPRM was the first effort by the FHWA to comprehensively rewrite its rules of practice for motor carrier administrative proceedings since 1985. The 1996 NPRM was intended to be the forerunner of a comprehensive revision of the Federal Motor Carrier Safety Regulations (FMCSRs) following the completion of a zero-based review of those regulations then underway in the agency. The proposal would have placed the new regulations in previously unused parts of chapter III of title 49 of the Code of Federal Regulations (CFR) reserved for the FMCSRs. The proposed rulemaking was intended to make administrative actions and proceedings more efficient while enhancing the guarantee of due process to carriers, individuals, and other entities by substantially increasing awareness of the consequences of noncompliance with commercial motor vehicle safety and hazardous materials regulations.

On October 21, 1996, the FHWA published a supplemental notice of proposed rulemaking (SNPRM) (61 FR 54601), to broaden the scope of the 1996 NPRM to include proceedings arising under section 103 of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) (Public Law 104-88, 109 Stat. 803, 852 (Dec. 29, 1995)). In the SNPRM, the FHWA proposed to adopt the term "Commercial Regulations" to refer to requirements imposed on motor carriers as a result of the transfer of functions from the former Interstate Commerce Commission ("ICC"). The SNPRM also extended the comment period to November 20, 1996. FHWA received 127 comments in response to the 1996 NPRM. No comments were received in response to the SNPRM. Comments relevant to those portions of the 1996 NPRM addressed in this SNPRM are discussed in the Discussion of Comments section of this document.

On February 16, 2000, FMCSA issued a final rule making technical amendments to part 386 and incorporated enforcement proceedings for Commercial Regulations into part 386 (65 FR 7753). This rule was intended to ensure all civil forfeiture and investigation proceedings instituted by FMCSA are governed by consistent procedures. In addition, FMCSA adopted some technical amendments

which reflected recent organizational changes, removed obsolete statutory citations, and incorporated recent statutory changes which affected the civil penalty schedule.

Given the zero-based review as well as various program changes that have been made since FHWA issued the 1996 NPRM and SNPRM, FMCSA is publishing this additional SNPRM. Although the 1996 NPRM proposed significant reorganization to the FMCSRs,<sup>1</sup> this SNPRM only proposes changes to part 386, Rules of practice for motor carrier, broker, freight forwarder, driver and hazardous materials proceedings, including our occasional enforcement of the HMRs on shippers.

**Statutory Authority**

Congress delegated certain powers to regulate interstate commerce to the Department of Transportation in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Public Law 85-670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred the authority of the ICC to regulate the qualifications and maximum hours-of-service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce to the FHWA. See 49 U.S.C. 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Public Law 74-255, 49 Stat. 543), now appears in chapter 315 of title 49, U.S.C. The regulations issued under this authority became known as the FMCSRs, appearing generally at 49 CFR parts 390-399, including the commercial regulations (49 CFR parts 360-379) and the Hazardous Materials Regulations (49 CFR parts 171-180). The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966, and appear in chapter 5 of title 49, U.S.C.

Between 1966 and 1999 a number of statutes added to the FHWA's authority. For a more detailed statutory background, see the preamble to the 1996 NPRM (61 FR 18866-67). The various statutory authorities authorize the enforcement of the FMCSRs and Hazardous Materials Regulations (HMRs) and provide both civil and criminal penalties for violations. In practice, when circumstances dictate that an enforcement action be instituted, civil penalties are more commonly sought than criminal sanctions. The

<sup>1</sup> The 1996 NPRM proposed replacing part 386 with part 363 and adding three new parts to title 49, CFR. These new parts were part 361, Administrative Enforcement, part 362, Safety ratings, and part 364, Violations, penalties, and collections.

administrative rules proposed in this rulemaking apply, among other things, to the administrative adjudication of civil penalties assessed for violations of the FMCSRs and the HMRs.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106–159, 113 Stat. 1748 (Dec. 9, 1999)) established FMCSA as a new operating administration within the Department of Transportation, effective January 1, 2000. The staff and responsibilities previously assigned to FHWA, and reassigned to a new Office of Motor Carrier Safety within the Department, are now assigned to FMCSA.

### Background

The goal of the 1996 proposal, which would have replaced part 386 with part 363, was to improve the then existing rules of procedure for motor carrier enforcement proceedings. Various external sources were consulted, notably the Model Adjudication Rules of the Administrative Conference of the United States (December 1993) and various procedural rules of other Federal agencies. In recognition of the importance of the historical context of the rules, the predecessors of the current rules, and their extensive amendments, were reviewed by the FHWA in hopes of identifying shortcomings and determining the underlying rationale for certain provisions, which may now seem unnecessary, unclear, or unavailing. For a detailed description of the findings of this review, see the preamble to the 1996 NPRM (61 FR 18872–75).

### Discussion of Comments

In response to the 1996 NPRM, 127 comments were submitted to the docket. Because a number of the policy decisions reflected in this SNPRM are an outgrowth of the comments received on the rules of practice portion of the 1996 NPRM (essentially proposed part 363), those relevant comments are summarized below and reflected in the proposed revisions to part 386. Comments to the 1996 NPRM relating to other aspects of that proposal are not addressed in this preamble.

### Service of Documents

Jewell Smokeless Coal disagreed with the wording in the preamble discussion of proposed § 363.302 (addressed in § 386.32 of current rule) regarding computation of time, which states “service is complete upon mailing so that the date of the postmark would control.” The commenter argued that the postal system is not always the most expedient way to disseminate important

information such as serving documents, creating the danger that the timeframes allowed would expire before the intended recipient has the opportunity to reply. As an alternative, such documents should be sent by certified mail and the day the document was received should be the date service is complete. If the recipient fails to pick up the certified documents within 10 days from the date notified by the certified mail, the date the documents are returned to the sender should become the date service was completed.

The commenter also suggested that certificates of service should accompany all mailings, including the notice of violation (NOV) (proposed § 363.102, current § 386.11), the reply form (proposed § 363.103), and the notice of determination and letter of disqualification (proposed § 363.202, current § 386.11(a)).

*FMCSA's Response.* In addressing Jewell Smokeless Coal's comment regarding the inefficiency of service by U.S. Mail, new section 386.6 proposes to include commercial delivery service as well as facsimile transmission as alternate methods of completing service. We believe the date of receipt is not the most efficient way to compute time, especially if respondent fails to accept service.

As proposed in § 386.6(c), all documents shall be accompanied by a certificate of service. The requirement is currently contained in § 386.31(b).

### Adjudication Procedure

Transportation Lawyer's Association (TLA) argued that proposed § 363.108(c)(2) would limit all potential affirmative answers to those actually raised, including those regarding jurisdiction. The commenter believed this to be wrong because the defense of lack of jurisdiction should be available anytime, as permitted by Rule 12(h)(3) of the Federal Rules of Civil Procedure.

*FMCSA's Response.* The content of proposed § 363.108(c)(2) is now in proposed § 386.14(d)(1)(B). Although the proposed provision requires respondents to submit all arguments relating to jurisdiction, limitation, and procedure in their reply, respondents are not precluded from raising jurisdictional arguments at a later time as per current § 386.36 redesignated as § 386.35, Motions to dismiss and motions for more definite statements.

TLA indicated that proposed § 363.108(c)(1) would establish that a general denial is sufficient grounds for a finding of default. The commenter objected to this provision, arguing that the burden of proof must be on the agency once the respondent denies the

claims. A general denial should prompt the agency to file a Motion for Final Agency Order or provide the respondent with an opportunity to correct its answer, instead of becoming tantamount to default. Failure of the agency to meet its burden should result in a denial of the motion with finality.

*FMCSA's Response.* A general denial does not assist the decisionmaker in determining whether there are material issues of fact in dispute. Therefore, in proposed § 386.14(d)(1), the contents of a reply must include the grounds for contesting a claim.

TLA indicated that proposed § 363.109(h) (not currently addressed in the FMCSRs) would permit either an attorney or another person to represent a respondent before the Assistant Administrator or ALJ. The commenter emphasized that the agency should indicate, in its notices or regulations, that the seriousness of the potential penalties might recommend the employment of legal counsel.

*FMCSA's Response.* Recommending the employment of legal counsel would be beyond the scope of the agency's authority. In accordance with proposed § 386.4, the agency affords the respondent several options in representation because the respondent may or may not be able to afford legal counsel. The proposal in § 386.4, however, would not permit a representative to engage in the unauthorized practice of law in violation of standards set by each State for legal representation.

Jewell Smokeless Coal indicated that the Assistant Administrator should not be the only one with the power to refer a case to an ALJ under proposed § 363.109 (current § 386.16). The respondent should be allowed to refer a matter to an ALJ if he/she believes there are sufficient facts for such referral. The commenter also indicated that the respondent should have the option to participate or not to participate in the referral. If the respondent is comfortable with a lesser process (in order to avoid the potential expenses involved in adjudication), then he/she should be allowed to take it.

*FMCSA's Response.* The respondent may only request that a matter be referred to an ALJ for hearing. It is the Assistant Administrator who will decide whether a matter is to be referred to the ALJ. See current § 386.16(b).

### Settlement Agreements

Proposed § 363.106(b)(2) would have required a settlement agreement to contain a finding of facts constituting the violations committed, while the current rule, § 386.16(c)(ii), requires “a

brief statement of the violations.” Commenters submitted that the current provision has been interpreted to mean alleged violations. *Crete Carrier et al.* sought assurance that the proposed 1996 requirement would not be construed as an admission, which could be used against them in litigation, *e.g.*, if a plaintiff claimed a willful violation of the regulations as an element of its claim for punitive damages in a crash involving a carrier, and then cited the settlement submission as evidence. The commenter also pointed to Federal Rules of Evidence 408, that evidence of payment of a disputed claim in connection with civil litigation is inadmissible in the proceeding to prove liability for the claim.

**FMCSA’s Response.** In proposed § 386.22, there is no requirement that settlements contain admissions of the violation. The parties may negotiate whether admissions are a condition of the settlement agreement. Respondent’s full payment as its reply to the notice of claim would constitute an admission of the violation.

With regard to the comment about the application of the Federal Rules of Evidence in civil penalty proceedings, proposed § 386.37 provides that where an evidentiary matter is not addressed in the agency’s rules or the APA, the Federal Rules of Evidence will be controlling.

The International Brotherhood of Teamsters (IBT) indicated that employees or their selected representatives should be entitled to participate in settlement negotiations.

**FMCSA’s Response.** A party would be able to choose its representative under proposed § 386.4.

TLA opposed proposed § 363.107 (not currently addressed in the FMCSRs), which would establish a 90-day limit for settlement negotiations if no resolution is achieved, because it provides an opportunity for FMCSA staff to avoid negotiating by causing delay or mere inaction.

**FMCSA’s Response.** There is nothing in the proposed regulation that would allow the agency to delay the process. After the 90-day settlement period, the respondent can seek administrative adjudication or binding arbitration if it decides to not make payment.

#### Enforcement

Overnite Express and Silvereagle Arnold indicated that a carrier should be given opportunity to respond and correct the violation before a fine is imposed.

**FMCSA’s Response.** The Field Administrator has a range of actions available to address violations,

including administrative handling without resort to civil penalties. If a notice of claim is issued and civil penalty assessed, the respondent may always argue corrective action has been taken, as a means of mitigating the amount of the civil penalty.

#### The Administrative Claim Process

The majority of the proposed changes to this SNPRM are briefly discussed in the Section-by-Section Analysis portion of this preamble. Many of the proposed changes are technical in nature to eliminate inconsistencies or increase the efficiency of the procedures. For example, in proposed § 386.8, entitled “Computation of time,” we eliminated the word “shall” in the current regulations and replaced it with such words as “will” or “must” to provide more definite delivery times for motions and replies to the decisionmaker. Because these changes are not substantive in nature, we will not discuss them in the Section-by-Section Analysis.

We are proposing to change the time within which respondents must reply to the notice of claim. Current § 386.14 provides 15 days from the date of service of the notice of claim for respondent to reply. Under proposed § 386.14, the reply period would be 30 days from the date of service of the notice of claim.

This proposed revision reflects a change from the Agency’s previous interpretation of 49 U.S.C 521(b)(1)(A), which states: “The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator’s intention to contest the matter.” Our previous interpretation, contained in both the current part 386 and the Agency’s civil penalty enforcement decisions, was that motor carriers charged with violations had only 15 days in which to contest those charges. We ask for comment as to whether the word “may” in the statute permits the Agency to expand the period of time for the motor carrier to contest the charges.

Proposed § 386.14 is taken from § 363.108 of the 1996 NPRM and proposes procedures for contested claims. The procedures would apply if settlement negotiations fail to result in a settlement agreement, or when the respondent chooses administrative adjudication. A contested claim would be resolved in an administrative proceeding adjudicated by a neutral third party provided by the agency. Depending on the choice of the respondent and the existence of a dispute of a material fact at issue in the case, the third party may be an informal hearing officer, a Department of

Transportation Administrative Law Judge, or the Assistant Administrator (agency decisionmaker).

The content of the reply in proposed § 386.14(b) would be similar to what is currently required in replies under part 386. If the respondent fails to reply to the notice of claim, § 386.14(c) would provide that the Field Administrator may issue a notice declaring that the notice of claim has become the final agency order. The final agency order would become effective 5 days following service of the notice of final agency order.

If respondent serves a reply that does not meet the requirements of § 386.14, respondent may be found in default at the discretion of the Assistant Administrator. Default would have the same effect as a failure to reply. In both situations, a final agency order would issue without inquiry as to the charged violations.

FMCSA has proposed in § 386.16 to provide an informal oral hearing as a new adjudication option. Section 386.16(c)(2) describes the process we are proposing. Using a hearing officer, this process would provide expedited consideration of a civil penalty case without the formalities attendant to a hearing before an ALJ. The agency invites comment on the addition of the informal oral hearing option. We are particularly interested in comments regarding the efficacy of instituting such a process, hearing officer’s qualifications, procedural rules that should govern the informal hearing process, and any other relevant issues commenters would like us to consider.

This SNPRM does not substantially change the current process for formal oral hearings. An overview of the formal oral hearing process follows:

1. Within 30 days of service of the notice of claim, respondent submits a reply in which it elects to pay (payment must be included), to negotiate, to adjudicate, or to submit to binding arbitration.

2. If the respondent requests administrative adjudication, it must submit a reply that conforms to § 386.14(a)(1). If respondent requests a formal oral evidentiary hearing and the Assistant Administrator concludes there is a disputed issue of material fact, the Assistant Administrator refers the matter to the Department’s Office of Hearings to be assigned to an ALJ.

3. An administrative law judge will preside over the hearing and findings of fact and conclusions of law and issue a decision. Under the Administrative Procedure Act (5 U.S.C. 557), an ALJ decision under this procedure is considered an initial decision and a

decision of the Assistant Administrator is considered an agency decision.

4. Also, if respondent initially chooses negotiation and negotiation fails, the respondent can request a hearing and the foregoing process applies.

### Section-by-Section Analysis

This section-by-section analysis describes the changes to current part 386 being proposed by this SNPRM. For the convenience of the reader, it references relevant sections in proposed part 363 of the 1996 NPRM and also specifically states current sections for which there are no proposed changes.

#### *Subpart A—Scope of Rules; Definitions*

The title of Subpart A would be revised to *Scope of Rules; Definitions and General Provisions* to reflect the inclusion of several preliminary procedural rules.

#### Definitions (§ 386.2)

Proposed § 386.2 would add, revise, and remove definitions in current § 386.2 to reflect our proposed revisions of part 386.

#### Separation of Functions (§ 386.3)

FMCSA is proposing to add § 386.3 to delineate the separation of functions between enforcement staff and the agency decisionmaker.

#### Appearances and Rights of Parties (§ 386.4)

FMCSA is proposing to add § 386.4, which includes current § 386.50 in its entirety, and the additional procedural requirement to file a notice of appearance in the action before participating in the proceedings.

#### Form of Filings and Extensions of Time (§ 386.5)

FMCSA is proposing to add § 386.5, which incorporates current § 386.33, and establishes length and content limits, and other administrative requirements and details for filing documents. In addition, the time period for responses to motions for continuance would be changed from 7 to 20 days, to remain consistent with the proposed change of the general requirement for serving all motions and responses.

#### Service (§ 386.6)

FMCSA is proposing to add § 386.6, which incorporates current § 386.31, and adds the following elements: (1) It specifies that the agency must ensure service of the notice of claim; (2) it includes commercial delivery services and facsimile (with consent of the

parties) as additional options for effecting service; and (3) it specifies other administrative provisions regarding service.

#### Filing of Documents (§ 386.7)

Proposed § 386.7 contains details relating to the filing of documents to establish standards relating to form and content.

#### Computation of Time (§ 386.8)

Proposed § 386.8 contains current § 386.32 in its entirety. This provision has been moved to Subpart A to locate it with other preliminary procedural requirements. The text has been edited but no substantive changes are intended.

#### Commencement of Proceedings (§ 386.11, 1996 NPRM proposed as § 363.103)

Section 386.11 describes the commencement of proceedings. The proposed revisions do not affect the driver qualification proceedings in paragraph (a). Proposed paragraph (b) removes references to notice of investigation (NOI) and introduces a new document, the notice of violation. As proposed, FMCSA would use the notice of violation as a means of notifying any person subject to the rules in this part that the agency has received information indicating that the person has violated provisions of the FMCSRs, HMRs, or Commercial Regulations, without assessing a civil penalty. This information may come from investigations, audits, or any other source of information. The notice of violation would address issues such as: Specific alleged violations and actions that a person might take to remedy problems identified by the agency; and other relevant information. The notice of violation would not be used to assert civil penalties.

The content of current § 386.11(b) would be redesignated as paragraph (c).

#### Complaint (§ 386.12, 1996 NPRM Proposed as § 363.102)

FMCSA is proposing to remove paragraphs (a) and (b) and to redesignate paragraphs (c)–(e) as (a)–(c). This change is proposed to make it consistent with the elimination of the notice of investigation.

#### Petition To Review and Request for Hearing: Driver Qualification Proceedings (§ 386.13)

FMCSA is not proposing any changes to the language in current § 386.13.

Reply (§ 386.14, 1996 NPRM Proposed as §§ 363.103)

The title of this section would be revised to Reply. Proposed paragraph (a) changes the time period for a reply to the notice of claim from 15 days to 30 days. Proposed paragraph (b) provides the contents of a reply to a notice of claim. Respondent may choose to pay the civil penalty, enter into settlement negotiations, request administrative adjudication, or seek binding arbitration. Proposed paragraph (c) describes what happens in the event of respondent's failure to reply. Proposed paragraph (d) describes the contents of a reply when requesting administrative adjudication. The reply must include admission or denial of each allegation, all affirmative defenses, including those relating to jurisdiction, limitations, and procedure, and state whether or not respondent seeks a hearing or chooses to submit evidence without a hearing.

#### Action on Replies to the Notice of Claim (§ 386.16)

The title of this section would be revised to Action on replies to the notice of claim. Proposed paragraph (a), Settlement negotiations, provides a 90-day period for settlement negotiations unless either party seeks to discontinue negotiations earlier. If negotiations fail to produce a settlement agreement, respondent must serve a reply under § 386.14(b)(1), (3), or (4).

Proposed paragraph (b), Requests to submit written evidence without oral hearing, changes the sequence and time during which the parties must serve all written evidence. The Field Administrator will have 45 days following service of respondent's reply in which to submit evidence and argument. The respondent will then have 30 days following service of the Field Administrator's submission to serve its own evidence and argument.

Proposed paragraph (c), Requests for hearing, provides that the Assistant Administrator will determine whether there exists a dispute of material fact at issue in the case that warrants a hearing. If a respondent requests a formal or informal oral hearing, the Field Administrator must serve a notice of consent or objection within 20 days of service of respondent's reply. If he/she objects, the Field Administrator must serve a motion for final agency order within 30 days of service of the objection. Respondent must serve its response to the Field Administrator's motion within 30 days of service.

If the Field Administrator objects to the request for an informal oral hearing, he or she must serve the objection, the

notice of claim, and respondent's reply. Based on these documents, the Assistant Administrator will determine whether there exists a dispute of a material fact and whether to grant or deny the request for an informal hearing. If the hearing is granted, a hearing officer will be assigned to the matter, and no further motions or discovery will be permitted. At the conclusion of the hearing, the hearing officer will issue a report to the Assistant Administrator with findings of fact and recommended disposition. Respondent waives its right to a formal oral hearing by participating in an informal hearing. If an informal oral hearing is denied, the Field Administrator must serve a motion for final agency order to which respondent will have an opportunity to answer. After reviewing the record, the Assistant Administrator may refer the matter to an Administrative Law Judge, assign the matter for informal oral hearing, or issue a final agency order based upon the submissions.

Proposed § 386.16(c)(2)(B) reserves the Assistant Administrator's authority to refer any matter for formal oral hearing even in instances where respondent has requested an informal oral hearing.

#### Intervention (§ 386.17)

FMCSA is not proposing any changes to the language in current § 386.17.

#### Payment of the Claim (§ 386.18)

Current part 386 does not specifically address payment of claims. This SNPRM proposes to add new § 386.18, Payment of claim.

Proposed paragraphs (a) and (b) state that payment may be made at any time before the issuance of a final agency order. If however, payment is not served upon the agency within 30 days of service of the notice of claim, the notice of claim becomes the final agency order.

Proposed paragraph (c) makes it clear that, unless the parties otherwise agree in writing, respondent's payment of the full claim amount as its reply to the notice of claim constitutes an admission of all facts alleged, waives respondent's opportunity to further contest the claim, and will result in the notice of claim becoming the final agency order. This is important because certain future agency enforcement actions may be based on, and certain consequences may flow from, prior and continued violations of the safety regulations. Therefore, compliance with proposed paragraph (c) will identify the implications of prior enforcement actions as related to maximum civil penalty cases under section 222 of the MCSIA. See 49 U.S.C. 521 note.

#### Subpart C—Consent Orders

The title of Subpart C would be revised to be Settlement Agreements.

#### Compliance Order (§ 386.21)

Current § 386.21 would be deleted in its entirety.

#### Consent Order (§ 386.22)

The title of this section would be revised to Settlement agreements and their contents. Proposed paragraph (a) describes the contents for settlement agreements and the binding effect they have on the parties. Proposed paragraph (b) addresses settlement agreements before the case comes before the agency decisionmaker. Proposed paragraph (c) sets forth procedures for settling a case pending before the agency decisionmaker. Proposed paragraph (d) describes procedures for settling a civil forfeiture case pending before and agency hearing officer.

#### Content of Consent Order (§ 386.23)

This section would be deleted in its entirety.

#### Subpart D—General Rules and Hearings

#### Service (§ 386.31, 1996 NPRM Proposed as § 363.303)

This section would be deleted in its entirety as superseded by § 386.6.

#### Computation of Time (§ 386.32, 1996 NPRM proposed as § 363.302)

This section would be deleted in its entirety as superseded by § 386.8.

#### Extension of Time (§ 386.33, 1996 NPRM proposed as § 363.304)

This section would be deleted in its entirety as superseded by § 386.5.

#### Official Notice (§ 386.34)

This section would be revised to streamline the use of official notice by the Assistant Administrator and Administrative Law Judge and redesignated as § 386.31.

#### Motions (§ 386.35)

Current paragraph (c) of § 386.35 would be amended to allow 20 days rather than 7 days for a reply to be served after a motion that is applying for an order or ruling not otherwise covered in part 386. This section would then be redesignated as § 386.34.

#### Motions To Dismiss and Motions for a More Definite Statement (§ 386.36, 1996 NPRM Proposed as § 363.108(c)(4))

This section would be redesignated as § 386.35.

We would add a new § 386.36, entitled Motions for Final Agency Order

to describe the procedures governing motions for final agency order.

#### Discovery Methods (§ 386.37, 1996 NPRM proposed as § 363.109)

The contents of current § 386.37 remain, with the exception of the last sentence, and will now be located in proposed paragraph (a). Proposed paragraph (b) would be included to clarify that where an evidentiary matter is not addressed in the agency's rules or the APA, the Federal Rules of Evidence will be controlling.

#### Scope of Discovery (§ 386.38)

FMCSA is not proposing any changes to the language in current § 386.38.

#### Protective Orders (§ 386.39)

FMCSA is not proposing any changes to the language in current § 386.39.

#### Supplementation of Responses (§ 386.40)

FMCSA is not proposing any changes to the language in current § 386.40.

#### Stipulations Regarding Discovery (§ 386.41)

FMCSA is not proposing any changes to the language in current § 386.41.

#### Written Interrogatories to Parties (§ 386.42)

This revised section includes the substance of current § 386.42 and adds provisions regarding page limits and time periods in which to exchange interrogatories.

#### Production of Documents and Other Evidence (§ 386.43)

FMCSA is not proposing any changes to the language in current § 386.43.

#### Request for Admissions (§ 386.44)

FMCSA is not proposing any changes to the language in current § 386.44.

#### Motion To Compel Discovery (§ 386.45)

FMCSA is not proposing any changes to the language in current § 386.45.

#### Depositions (§ 386.46)

This revised section provides procedures governing depositions in civil penalty proceedings. Depositions would only be allowed after appointment of an ALJ. Prior to assignment of an ALJ, either party could petition the Assistant Administrator to conduct depositions on a showing of good cause. Proposed paragraph (e) includes a witness limit of no more than 5 witnesses without leave from the agency decisionmaker, and the deposition itself may not exceed 8 hours for any one witness. Current § 386.46(e)

would now be redesignated as proposed § 386.46(f).

#### Use of Deposition at Hearings (§ 386.47)

FMCSA is not proposing any changes to the language in current § 386.47.

#### Medical Records and Physicians' Reports (§ 386.48)

FMCSA is not proposing any changes to the language in current § 386.48.

#### Form of Written Evidence (§ 386.49)

FMCSA is not proposing any changes to the language in current § 386.49.

#### Appearances and Rights of Witnesses (§ 386.50)

This section would be deleted in its entirety as superseded by § 386.4.

#### Amendment and Withdrawal of Proceedings (§ 386.51, 1996 NPRM Proposed as § 363.109(i))

Proposed § 386.51(b) would revise current § 386.51(b) by allowing a party to withdraw his or her pleadings more than 15 days prior to the scheduled hearing without the approval of the Assistant Administrator or the Administrative Law Judge. Withdrawal within the 15 days prior to the scheduled hearing would still require approval of the decisionmaker. The decisionmaker would grant the request for withdrawal unless it would result in injustice, irreparable harm, or prejudice to the non-moving party. This proposed change would make paragraph (b) of this section consistent with the requirements in paragraph (a) of this section.

#### Appeals From Interlocutory Rulings (§ 386.52, 1996 NPRM Proposed as § 363.307)

This revised section would set forth detailed procedures governing interlocutory appeals. It delineates interlocutory appeals for cause and defines all instances of interlocutory appeals of right. This section also notes that decisions regarding interlocutory appeals may not be appealed to the Assistant Administrator until the decision has been entered on the record. Decisions by the Assistant Administrator on interlocutory appeals do not constitute final agency orders for purposes of judicial review.

#### Subpoena, Witness Fees (§ 386.53)

FMCSA is not proposing any changes to the language in current § 386.53.

#### Administrative Law Judges (§ 386.54, 1996 NPRM Proposed as § 363.305)

This section would eliminate existing paragraph (a). This section would

enumerate the powers of the ALJs, as well as the limitations on those powers. It would also provide for the disqualification of ALJs.

#### Prehearing Conferences (§ 386.55)

FMCSA is not proposing any changes to the language in current § 386.55.

#### Hearings (§ 386.56)

FMCSA is not proposing any changes to the language in current § 386.56.

#### Proposed Findings of Fact, Conclusions of Law (§ 386.57)

FMCSA is not proposing any changes to the language in current § 386.57.

#### Burden of Proof (§ 386.58)

FMCSA is not proposing any changes to the language in current § 386.58.

#### Decision (§ 386.61)

FMCSA is not proposing any changes to the language in current § 386.61.

#### Review of Administrative Law Judge's Decision (§ 386.62)

FMCSA is not proposing any changes to the language in current § 386.62.

#### Decision on Review (§ 386.63)

FMCSA is not proposing any changes to the language in current § 386.63.

#### Reconsideration (§ 386.64, 1996 NPRM proposed as § 363.114)

As proposed, most of the existing text in § 386.64 would become paragraph (a). We would also add a new provision stating that a petition for reconsideration stays only the payment of a civil penalty. No other aspects of the final agency order would be stayed unless ordered by the Assistant Administrator. The revised section also includes proposed new paragraphs (b)–(e). Proposed paragraph (b) would codify current case law regarding petitions for reconsideration of final agency orders issued due to default by the respondent. This change would clarify that the only issue that will be considered under the petition for reconsideration of a final agency order based on default is whether a default occurred. Having this information in the regulations should relieve parties, as well as the decisionmaker, of the burden of addressing other issues in these petitions for reconsideration. Proposed paragraphs (c)–(e) provide timelines for serving answers and when a decision must be made by the Assistant Administrator.

#### Failure To Comply With Final Agency Order (§ 386.65)

FMCSA is not proposing any changes to the language in current § 386.65.

#### Motions for Rehearing or for Modification (§ 386.66)

This section would be deleted in its entirety and all motions served in accordance with proposed § 386.34.

#### Appeal (§ 386.67, 1996 NPRM Proposed as § 363.115)

Section 386.67 would be revised to adopt the changes proposed for § 363.115 in the 1996 NPRM. The heading for § 386.67 would be changed from "Appeal" to "Judicial review." Current § 386.67 would be divided into two paragraphs, (a) and (b). The word "hearings" would be replaced with "administrative adjudication" and in the second half of the section, "final agency order" would replace "order." The effect of these changes would be to liberally interpret 49 U.S.C. 521(b)(8) to allow judicial review for contested claims resulting in a final agency order, but not for those claims that are resolved through settlement agreement or in which respondent failed to timely reply. The statute provides that judicial review is only available after a hearing. FMCSA believes, however, its interpretation is appropriate in this instance because these proposed rules provide for resolution of contested claims in an administrative adjudication without formal hearing.

#### *Subpart F—Injunctions and Imminent Hazards*

FMCSA is not proposing any changes to the language in current §§ 386.71–386.72.

#### *Subpart G—Penalties*

FMCSA is not proposing any changes to the language in current §§ 386.81–386.84.

### Appendices

FMCSA is not proposing any changes to the language in current appendix A or appendix B.

### Rulemaking Analyses and Notices

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposals contained in this document would not result in an annual effect on the economy of \$100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This proposal would

augment, replace, or amend existing procedures and practices. Moreover, the agency's inclusion of an informal hearing process would add flexibility and less expense for smaller businesses. Any economic consequences flowing from the procedures in the proposal are primarily mandated by statute. A regulatory evaluation is not required because of the ministerial nature of this action.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the agency has evaluated the effects of this SNPRM on small entities. No economic impacts of this rulemaking are foreseen, as the rule would impose no additional substantive burdens that are not already required by the regulations to which these procedural rules would serve. Therefore, FMCSA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### *Executive Order 13132 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The rules proposed herein in no way preempt State authority or jurisdiction, nor do they establish any conflicts with existing State role in the regulation and enforcement of commercial motor vehicle safety. It has therefore been determined that the SNPRM does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### *National Environmental Policy Act*

This rulemaking is categorically excluded from environmental studies under paragraph 6.u. of FMCSA Environmental Order 5610.1C.

#### *Executive Order 13211 (Energy Supply, Distribution, or Use)*

This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

#### *Executive Order 13045 (Protection of Children)*

This proposed action is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children. The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because FMCSA has determined that the changes in this rulemaking would not have an impact of \$100 million or more in any one year. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children.

#### *Executive Order 12630 (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.

#### *Executive Order 12988 (Civil Justice Reform)*

This action 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.

#### *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 of Federal programs and activities do not apply to this program.

#### *Paperwork Reduction Act*

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.*

#### *Regulation Identification Number*

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

#### **List of Subjects in 49 CFR Part 386**

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

Issued on: October 13, 2004.

**Annette M. Sandberg,**  
*Administrator.*

In consideration of the foregoing, FMCSA proposes to amend 49 CFR part 386, as follows:

#### **PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS**

1. The authority citation for part 386 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

2. Revise the heading of Subpart A to read as follows:

#### **Subpart A—Scope of Rules; Definitions and General Provisions**

3. Amend § 386.2 by removing the definitions for *Compliance Order* and *Consent Order* in their entirety.

4. Amend § 386.2 by revising definitions for *Administration* and *Final agency order*; and by adding definitions for *Administrative adjudication*, *Agency*, *Agency Counsel*, *Decisionmaker*, *Default*, *Department*, *FMCSRs*, *Formal hearing*, *Hearing officer*, *HMRs*, *Informal hearing*, *Interstate commerce*, *Mail*, *Notice of Claim*, *Notice of Violation*, *Person*, *Reply*, *Secretary*, *Service*, *State*, and *Submission of written evidence without hearing* to read as follows:

#### **§ 386.2 Definitions.**

\* \* \* \* \*

*Administration* means the Federal Motor Carrier Safety Administration.

*Administrative adjudication* means a process or proceeding to resolve contested claims in conformity with the Administrative Procedure Act, 5 U.S.C. 554–558.

*Agency* means the Federal Motor Carrier Safety Administration.

*Agency Counsel* means the attorney who prosecutes a civil penalty matter on behalf of the Field Administrator.

\* \* \* \* \*

*Decisionmaker* means the Assistant Administrator of the Federal Motor Carrier Safety Administration, acting in the capacity of the decisionmaker or any person to whom the Assistant Administrator has delegated his/her

decisionmaking authority in a civil penalty proceeding. As used in this subpart, the agency decisionmaker is the official authorized to issue a final decision and order of the agency in a civil penalty proceeding.

*Default* means any failure to reply in the time required or failure to submit an adequate reply in accordance with the requirements of this part, which may lead to a final agency order or additional penalties.

*Department* means the Department of Transportation.

\* \* \* \* \*

*Final agency order* means a notice of final agency action issued pursuant to this part by either the appropriate agency Field Administrator (for default judgments under § 386.15), or the agency Assistant Administrator, typically requiring payment of a civil penalty by a broker, freight forwarder, driver, shipper, or motor carrier.

*FMCSRs* means the Federal Motor Carrier Safety Regulations.

*Formal hearing* means the full opportunity by respondent to present relevant discovery, facts, and evidence, including the right of cross-examination of witnesses and the preparation of a written record.

*Hearing officer* means a neutral agency employee designated by the Assistant Administrator to preside over an informal hearing.

*HMRs* means Hazardous Materials Regulations.

*Informal hearing* means a full opportunity by respondent to present relevant facts and evidence before a hearing officer, who then prepares findings of fact and recommendations to the decisionmaker.

*Interstate commerce* means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

*Mail* means U.S. first class mail, U.S. registered or certified mail, or use of a commercial delivery service.

\* \* \* \* \*

*Notice of Claim* (NOC) means a document alleging a violation of the FMCSRs, HMRs, or Commercial Regulations, for which a proposed civil penalty has been assessed.

*Notice of Violation* (NOV) means a document alleging a violation of the

FMCSRs, HMRs, or Commercial Regulations, for which a warning or other corrective action, other than payment of a civil penalty, is recommended.

*Person* means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

*Reply* means a written response to a notice of claim, admitting or denying the allegations contained within the Notice of Claim. In addition, the reply provides the mechanism for determining whether the respondent seeks to pay, settle, contest, or seek binding arbitration of the claim. See § 386.14. If contesting the allegations, the reply must also set forth all known affirmative defenses and factors in mitigation to the claim.

\* \* \* \* \*

*Secretary* means the Secretary of Transportation.

*Service* means to cause delivery of a document, motion, or pleading.

*State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

*Submission of written evidence without hearing* means the right of respondent to present written evidence and legal argument to the agency decisionmaker, or his/her representative, in lieu of an oral hearing.

5. Add § 386.3 to Subpart A to read as follows:

**§ 386.3 Separation of functions.**

(a) Civil penalty proceedings, including hearings, will be prosecuted by agency counsel who represents the Field Administrator.

(b) An agency employee, including those listed in paragraph (c) of this section, engaged in the performance of investigative or prosecutorial functions in a civil penalty action may not, in that case or a factually-related case, discuss or communicate the facts or issues involved with the agency decisionmaker, administrative law judge, hearing officer or others listed in paragraph (d) of this section, except as counsel or a witness in the public proceedings.

(c) The Deputy Chief Counsel, Assistant Chief Counsel for Enforcement and Litigation, attorneys on their staff, and field enforcement attorneys serve as enforcement counsel in the prosecution of all cases brought under this part.

(d) The Chief Counsel, the Special Counsel to the Chief Counsel, attorneys serving as Adjudications Counsel, and attorneys on the staff of the Chief

Counsel advise the decisionmaker regarding civil penalty proceedings under this part.

6. Add § 386.4 to Subpart A to read as follows:

**§ 386.4 Appearances and rights of parties.**

(a) Any party may be heard either in person, by counsel, or by other representatives, as the party elects.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party. An attorney or representative who represents a party must file a notice of appearance in the action, in the manner provided in § 386.7 of this subpart, and will serve a copy of the notice of appearance on each party, in the manner provided in § 386.6 of this subpart, before participating in any proceeding governed by this subpart. The attorney or representative will include his/her name, address, telephone number, and facsimile number in the notice of appearance.

7. Add § 386.5 to Subpart A to read as follows:

**§ 386.5 Form of filings and extensions of time.**

(a) *Length and content.* Except for the Notice of Claim and Reply, motions, briefs, and other filings may not exceed 20 pages except as permitted by Order following a motion to exceed the page limitation based upon good cause shown. Exhibits or attachments in support of the relevant filing are not included in the page limit.

(b) *Paper and margins.* Briefs must be printed on 8½" by 11" paper with a one-inch margin on all four sides of text, to include pagination and footnotes.

(c) *Spacing, type, and font minimal.* Briefs will use the following line format: single spacing for the caption and footnotes, and double-spacing for the main text. All printed matter must appear in at least 12-point type.

(d) *Extensions of time.* Only those requests showing good cause will be granted. No motion for continuance or postponement of a hearing date filed within 15 days of the date set for a hearing will be granted unless accompanied by an affidavit showing extraordinary circumstances warrant a continuance. Unless directed otherwise by the Assistant Administrator, Administrative Law Judge or Hearing Officer before whom a matter is pending, the parties may stipulate to reasonable extensions of time by filing the stipulation in the official docket and serving copies on all parties on the certificate of service. All requests for extensions of time must be filed with:

(1) The Assistant Administrator if the matter is pending before the agency decisionmaker; or

(2) The Hearing Officer if the matter has been assigned to a hearing officer for informal hearing; or

(3) The Administrative Law Judge if the matter has been called for formal hearing; or

(4) The Field Administrator if the matter is not yet before the agency decisionmaker.

8. Add § 386.6 to Subpart A to read as follows:

**§ 386.6 Service.**

(a) *General.* All documents must be served upon the party or the party's registered agent. If a notice of appearance has been filed in the specific case in question accordance with § 386.4, service is to be made on the party's attorney of record or their designated representative.

(b) *Type of service.* A person may serve documents by personal delivery utilizing governmental or commercial entities, U.S. mail, commercial mail delivery, and upon prior written consent of the parties, facsimile. Written consent for facsimile service must specify the facsimile number where service will be accepted. When service is made by facsimile, a copy will also be served by any other method permitted by this section. Facsimile service occurs when transmission is complete.

(c) *Certificate of service.* A certificate of service will accompany all documents served in an administrative proceeding. It must consist of a certificate of personal delivery or a certificate of mailing, facsimile, or commercial delivery service, signed by the person making the personal delivery or mailing the document, the date the service occurred, and must include a list of persons to be served in accordance with § 386.7.

(d) *Date of service.* A document will be considered served on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Service by the administrative law judge.* The administrative law judge will serve a copy of each document including, but not limited to, notices of prehearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail, provide a courtesy copy to the agency decisionmaker via the agency's

adjudications counsel, and forward the original to DOT Dockets.

(f) *Valid service.* A properly addressed document, sent in accordance with this subpart, which was returned, not claimed, or refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time the document was mailed, or the date personal delivery of the document was refused. Service by delivery after 5 p.m. is deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(g) *Presumption of service.* There shall be a presumption of service if the document is served where a party or a person customarily receives mail.

9. Add § 386.7 to Subpart A to read as follows:

**§ 386.7 Filing of documents.**

(a) *Address and method of filing.* A person serving or tendering a document for filing must personally deliver or mail one copy of each document to all parties and counsel or their designated representative of record if represented. If the matter has been transferred to the DOT Docket, the original of all documents subsequently served in the matter must also be filed as follows: U.S. DOT Dockets (FMCSA), 400 7th Street, SW., Room PL-401, Washington, DC 20590, Attention: Hearing Docket Clerk. A person will serve a copy of each document on each party in accordance with § 386.6 of this subpart.

(b) *Form.* Each document must be typewritten or legibly handwritten.

(c) *Contents.* Unless otherwise specified in this part, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document.

10. Add § 386.8 to Subpart A to read as follows:

**§ 386.8 Computation of time.**

(a) *Generally.* In computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period will run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period will be computed.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the

date of entry is the date the order is served.

(c) *Computation of time for delivery by mail.* (1) Service of all documents is deemed effected at the time of mailing.

(2) Documents are not deemed filed until received by the docket clerk.

(3) Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

11. Amend § 386.11 by revising paragraphs (b) and (c) to read as follows:

**§ 386.11 Commencement of proceedings.**

\* \* \* \* \*

(b) *Notice of violation.* The agency may issue a notice of violation as a means of notifying any person subject to the rules in this part that it has received information (*i.e.*, from an investigation, audit, or any other source) wherein it has been alleged that the person has violated provisions of the FMCSRs, HMRs, or Commercial Regulations. The notice of violation serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the agency, formal enforcement action may be taken in accordance with paragraph (c) of this section. The notice of violation will address the following issues, as appropriate:

(1) The specific alleged violations.

(2) Any specific actions that the agency determines are appropriate to remedy the identified problems.

(3) The means by which the notified person can inform the agency that it has received the notice of violation and either has addressed the alleged violation or does not agree with the agency's assertions in the notice of violation.

(4) Any other relevant information.

(c) *Civil penalty proceedings.* These proceedings are commenced by the issuance of a notice of claim.

(1) Each notice of claim contains the following:

(i) A statement setting forth the facts alleged.

(ii) Any regulation allegedly violated by the respondent.

(iii) The proposed civil penalty and notice of the maximum amount authorized to be claimed under statute.

(iv) The time, form and manner whereby the respondent may pay, contest or otherwise seek resolution of the claim.

(2) In addition to the information required by paragraph (c)(1) of this section, the notice of claim may contain such other matters as the agency deems appropriate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the agency may require the respondent to post a copy of the notice of claim in such place or places and for such duration as the agency may determine appropriate to aid in the enforcement of the law and regulations.

**§ 386.12 [Amended]**

12. Remove § 386.12(a) and (b) in their entirety. Then redesignate current § 386.12 (c) through (e) as proposed § 386.12 (a) through (c) respectively.

13. Revise § 386.14 to read as follows:

**§ 386.14 Reply.**

(a) *Time for reply to the notice of claim.* Respondent must reply to the notice of claim in writing within 30 days following service. The reply is to be served in accordance with § 386.6 upon the service center who issued the notice.

(b) *Contents of reply.* The respondent must reply to the notice of claim within the time allotted by choosing one of the following:

(1) Paying the full amount claimed in the notice of claim in accordance with § 386.18 of this part;

(2) Entering into settlement negotiations (while preserving the right to contest the claim at a later date). This option is not available if the notice of claim is based upon an enhanced penalty pursuant to the Motor Carrier Safety Improvement Act of 1999 (MCSIA) § 222, 49 U.S.C. 521 note;

(3) Contesting the claim by requesting administrative adjudication pursuant to paragraph (d) of this section; or

(4) Seeking binding arbitration in accordance with the agency's program. Although the amount of the proposed penalty may be disputed, referral is contingent upon an admission of liability that the violations occurred.

(c) *Failure to reply to the notice of claim.* (1) Respondent's failure to reply in accordance with paragraph (a) may result in the issuance of a notice of final agency order by the Field Administrator. The notice will declare respondent to be in default and further declare the notice of claim, including the civil penalty assessed in the notice of claim, to be the final agency order in the proceeding. The final agency order will be effective five days following service of the notice of final agency order.

(2) The default constitutes an admission of all facts alleged in the notice of claim and a waiver of respondent's opportunity to contest the claim. Under very limited circumstances, the default may be

reviewed by the Assistant Administrator in accordance with § 386.64(b) where a respondent can demonstrate excusable neglect, a meritorious defense, and due diligence in seeking relief.

(3) Failure to pay the civil penalty as directed in a final agency order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

(d) *Request for administrative adjudication.* The respondent may, contest the claim and request administrative adjudication pursuant to paragraph (b)(3) of this section. An administrative adjudication is a process to resolve contested claims before the Assistant Administrator, Administrative Law Judge, or agency hearing officer.

(1) *Contents.* In addition to the general requirements of this section, the reply must state the grounds for contesting the claim and must raise any affirmative defenses the respondent intends to assert. Specifically, the reply:

(i) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial.

Any allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the agency decisionmaker upon motion by Claimant.

(ii) Must include all affirmative defenses, including those relating to jurisdiction, limitations, and procedure.

(iii) Must state which one of the following respondent seeks:

(A) To submit written evidence without hearing.

(B) An informal oral evidentiary hearing.

(C) A formal oral evidentiary hearing.

14. Revise § 386.16 to read as follows:

**§ 386.16 Action on replies to the notice of claim.**

(a) *Settlement negotiations.*

(1) Settlement negotiations must be concluded within 90 days of service of the notice of claim. If a settlement has not been reached prior to the end of this period, agency counsel will file a notice of impasse, which automatically triggers respondent's obligation to proceed under § 386.14(b)(1),(3), or (4).

(2) Either party may, at any time, discontinue settlement negotiations by filing a notice with the other party. Respondent must, within 30 days following service of the notice, serve a reply under § 386.14(b)(1),(3), or (4).

(3) Nothing in this subsection is intended to prohibit the parties from entering into settlement negotiations at

any time during the administrative adjudication process. If however the matter is before the agency decisionmaker, settlement between the parties is contingent upon approval of the agency decisionmaker pursuant to § 386.22(c).

(b) *Requests to submit written evidence without oral hearing.* Where respondent has elected to submit written evidence in accordance with § 386.14(d)(1)(D)(i):

(1) Agency counsel must, not later than 45 days following service of respondent's reply, serve all written evidence and argument in support of the notice of claim to the Assistant Administrator via DOT Dockets in accordance with §§ 386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.

(2) Respondent will, not later than 30 days following service of agency counsel's written evidence and argument, serve its written evidence and argument with the Assistant Administrator via DOT Dockets in accordance with §§ 386.6 and 386.7.

(3) All written evidence submitted by the parties must conform to the requirements of § 386.49.

(4) Following submission of evidence and argument as outlined in this section, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted, or may issue any other order as may be necessary to adjudicate the matter.

(c) *Requests for hearing.*

(1) If a request for an oral hearing has been filed, the Assistant Administrator will determine whether there exists a dispute of a material fact at issue in the matter. If so, the matter will be set for hearing in accordance with respondent's reply. If it is determined that there does not exist a dispute of a material fact at issue in the matter, the Assistant Administrator may issue a decision based on the written record.

(2) If a respondent requests a formal or informal oral evidentiary hearing in its reply, the Field Administrator must serve upon the Assistant Administrator and respondent a notice of consent or objection to the request within 20 days of service of respondent's reply.

(3) *Requests for formal oral hearing.* If the Field Administrator objects to a request for formal oral hearing, he/she must serve a motion for final agency order pursuant to § 386.36 within 30 days of service of the objection. The motion must set forth the reasons why claimant is entitled to judgment as a matter of law. Respondent must, within

30 days of service of the objection and motion, submit and serve a response to rebut movant's objection. After reviewing the record, the Assistant Administrator will either set the matter for hearing by referral to a Department of Transportation Administrative Law Judge or issue a final agency order based upon the submissions.

(4) *Requests for informal oral hearing.*

(i) If the Field Administrator objects to a request for an informal oral hearing, he/she must serve the objection, a copy of the Notice of Claim, and a copy of respondent's reply, on the respondent and Assistant Administrator, pursuant to paragraph (c)(2) of this section. Based upon the notice of claim, the reply, and the objection, the Assistant Administrator will issue an order granting or denying the request for informal hearing.

(A) *Informal hearing granted.* If the request for informal oral hearing is granted by the Assistant Administrator, a hearing officer will be assigned to hear the matter and will set forth the date, time and location for hearing. No further motions will be entertained, and no discovery will be allowed. At hearing, all parties may present evidence, written and oral, to the hearing officer following which, the hearing officer will issue a report to the Assistant Administrator containing findings of fact and recommending a disposition of the matter. By participating in an informal hearing, respondent waives its right to a formal oral hearing.

(B) *Informal hearing denied.* If the request for informal oral hearing is denied, the Field Administrator must serve a motion for final agency order pursuant to § 386.36 within 30 days. The motion must set forth the reasons why claimant is entitled to judgment as a matter of law. Respondent must, within 30 days of service of the objection and motion, submit and serve a response to rebut movant's objection. After reviewing the record, the Assistant Administrator will set the matter for formal hearing by referral to a Department of Transportation Administrative Law Judge, will assign the matter for informal oral hearing, or will issue a final agency order based upon the submissions.

(ii) Nothing in this section shall limit the Assistant Administrator's authority to refer any matter for formal oral hearing, even in instances where respondent seeks only an informal oral hearing.

15. Add § 386.18 to Subpart B to read as follows:

**§ 386.18 Payment of the claim.**

(a) Payment of the full amount claimed may be made at any time before issuance of a final agency order. After the issuance of a final agency order, claims are subject to interest, penalties, and administrative charges in accordance with 4 CFR part 103.

(b) If respondent elects to pay the full amount in its reply, payment must be postmarked within 30 days following service of the notice of claim. Failure to serve payment within 30 days of service of the notice of claim will constitute a default and may result in the notice of claim, including the civil penalty assessed by the notice of claim, becoming the final agency order in the proceeding pursuant to § 386.14(c).

(c) Unless objected to in writing, payment of the full amount in its reply constitutes an admission by the respondent of all facts alleged in the notice of claim. Payment waives respondent's opportunity to further contest the claim, and will result in the notice of claim becoming the final agency order.

16. Revise heading of Subpart C to read as follows:

**Subpart C—Settlement Agreements**

**§ 386.21 [Removed]**

17. Remove § 386.21.

18. Revise § 386.22 to read as follows:

**§ 386.22 Settlement agreements and their contents.**

(a) *Settlement agreements.*

(1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Assistant Administrator or designee. Such settlement agreement must contain the following:

(i) The statutory basis of the claim;

(ii) A brief statement of the violations;

(iii) The amount claimed and the amount paid;

(iv) The date, time, and place and form of payment;

(v) A statement that the agreement is not binding on the agency until executed by the Assistant Administrator or his/her designee;

(vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately; and

(vii) A statement that the agreement is the final agency order.

(2) A settlement agreement may contain any conditions, actions, or

provisions agreed by the parties to redress the violations cited in the notice of claim or notice of violation.

(3) An executed settlement agreement is a final agency order and is binding on the respondent and the agency according to its terms. The respondent's consent to a settlement agreement that has not been executed by the Assistant Administrator or his/her designee may not be withdrawn for a period of 30 days after it is executed by the respondent.

(b) *Civil forfeiture proceedings not before agency decisionmaker.* When a respondent has agreed to a settlement at any time prior to the case coming before the agency decisionmaker, the parties may execute an appropriate agreement for disposing of the case. The agreement does not require approval by the agency decisionmaker.

(c) *Civil forfeiture proceedings before agency decisionmaker.* When a respondent has agreed to a settlement of a civil forfeiture before a final order has been issued, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the Assistant Administrator. The agreement is filed with the Assistant Administrator who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she shall enter an order in accordance with its terms.

(d) *Civil forfeiture proceedings before administrative law judge.* When a respondent has agreed to a settlement of a civil forfeiture before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the ALJ. The agreement is filed with the ALJ who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the ALJ accepts the agreement, he/she shall enter an order in accordance with its terms.

(e) *Civil forfeiture proceedings before agency hearing officer.* When a respondent has agreed to a settlement of a civil forfeiture before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case for the consideration of the hearing officer. The agreement is filed with the hearing officer who, within 20 days of receipt will make a report and recommendation to the Assistant Administrator who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the

Assistant Administrator accepts the agreement, he/she will enter an order in accordance with its terms.

**§ 386.23 [Removed]**

19. Remove § 386.23 in its entirety.  
20. Revise § 386.31 to read as follows:

**§ 386.31 Official notice.**

The Assistant Administrator or administrative law judge may take official notice of any fact not appearing in evidence in the record. Where the decision rests on a material and disputable fact of which the agency has taken official notice, a party is entitled to an opportunity to demonstrate the contrary. If a final agency order has been issued, the request will be in accordance with § 386.64 of this part. If official notice is taken prior to the issuance of a final agency order, the request must comply with § 386.63 of this part.

**§ 386.32 [Removed]**

21. Remove § 386.32 in its entirety.

**§ 386.33 [Removed]**

22. Remove § 386.33 in its entirety.

**§ 386.34 [Removed]**

23. Remove § 386.34 in its entirety.

**§ 386.35 [Redesignated as § 386.34]**

24. Redesignate § 386.35 as § 386.34.  
25. Amend redesignated § 386.34(c) by removing the number "7" and adding, in its place, the number "20."

**§ 386.36 [Redesignated as § 386.35]**

26. Redesignate § 386.36 as § 386.35.  
27. Add new § 386.36.

**§ 386.36 Motions for final agency order**

(a) *Generally.* Unless otherwise provided in this section, the motion and answer will be governed by § 386.34. If the matter is pending before a Field Administrator when the motion is made, the filing is to be served in accordance with §§ 386.6 and 386.7. Movant's filing must contain a motion and memorandum of law, which may be separate or combined and must include all responsive pleadings, notices, and other filings in the case to date. Upon filing, the matter is officially transferred from the service center to the agency decisionmaker who will then preside over the matter.

(b) *Form and content.* The motion will state with particularity the grounds upon which it is based and the substantial matters of law to be argued. The judgment sought will be rendered forthwith if, after reviewing the record in a light most favorable to the non-moving party, shows no genuine issue exists as to any material fact.

(c) *Answer to Motion.* The non-moving party will, within 30 days of

service of the motion for final order, submit and serve a response to rebut movant's motion.

28. Revise § 386.37 to read as follows:

**§ 386.37 Discovery methods.**

(a) Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Except as otherwise provided in these rules, in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, or by the Assistant Administrator or Administrative Law Judge, the Federal Rules of Evidence apply in all administrative adjudications.

29. Revise § 386.42 to read as follows:

**§ 386.42 Written interrogatories to parties.**

(a) Without leave, any party may serve upon any other party written interrogatories to be answered by the party to whom the interrogatories are directed; or, if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who will furnish the information available to that party. Interrogatories may be served on the claimant after commencement of the action and on any other party with or after service of the process and initial pleading upon that party.

(b) A maximum number of interrogatories served will not exceed 30, including all subparts, unless the Assistant Administrator or Administrative Law Judge permits a larger number on motion and for good cause shown. Other interrogatories may be added without leave, so long as the total number of approved and additional interrogatories does not exceed 30.

(c) Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the party, or counsel for the party if represented making the response. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a respondent may serve upon claimant its answers or objections within 45 days after service of the notice of claim or within such shortened or longer period as the Assistant Administrator or the administrative law judge may allow.

(d) Motions to compel may be made in accordance with § 386.45.

(e) A copy of the interrogatories, answers, and all related pleadings must be served on the Assistant Administrator or, in cases that have been called to a hearing, on the administrative law judge, and upon all parties to the proceeding.

(f) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Assistant Administrator or administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

30. Revise § 386.46 to read as follows:

**§ 386.46 Depositions.**

(a) *When, how, and by whom taken.* The deposition of any witness may be taken at reasonable times subsequent to the appointment of an Administrative Law Judge. Prior to appointment of an Administrative Law Judge, a party may petition the Assistant Administrator, in accordance with § 386.37, for leave to conduct a deposition based on good cause shown. Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness must indicate to the witness and all other parties the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each such witness is expected to testify.

(c) *Notice.* A party desiring to take a deposition must give notice to the witness and all other parties. Notice must be in writing. Notice of the deposition must be given not less than 20 days from when the deposition is to be taken if the deposition is to be held within the continental United States and not less than 30 days from when the deposition is to be taken if the deposition is to be held elsewhere unless a shorter time is agreed to by the parties or by leave of the Assistant Administrator or Administrative law judge by motion for good cause shown.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition must be sworn, and any other party must be given the right to cross-examine. The questions propounded and the answers to them, together with all objections made, must be reduced to writing; read by or to, and subscribed by the witness; and certified by the person

administering the oath. The person who took the deposition must seal the deposition in an envelope and mail it by certified mail to the Assistant Administrator or the Administrative Law Judge, if one has been appointed. Subject to objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, the deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice of it.

(e) *Witness limit.* No party may seek deposition testimony of more than 5 witnesses per side without leave of the decisionmaker or Administrative Law Judge for good cause shown. Individual depositions are not to exceed 8 hours for any one witness.

(f) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. The objecting party or deponent must however, immediately move for a ruling on his or her objections to the deposition conduct or proceedings before the Assistant Administrator or Administrative Law Judge, who then may limit the scope or manner of the taking of the deposition.

#### § 386.50 [Removed]

31. Remove § 386.50 in its entirety.

32. Amend § 386.51 by revising paragraph (b) to read as follows:

#### § 386.51 Amendment and withdrawal of pleadings.

\* \* \* \* \*

(b) A party may withdraw his/her pleading any time more than 15 days prior to the hearing by serving a notice of withdrawal on the Assistant Administrator or the Administrative Law Judge. Within 15 days prior to the hearing a withdrawal may be made only at the discretion of the Assistant Administrator or the Administrative Law Judge. The withdrawal will be granted absent a showing of injustice, prejudice, or irreparable harm to the non-moving party.

33. Revise § 386.52 to read as follows:

#### § 386.52 Appeals from interlocutory rulings.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the

Assistant Administrator until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Assistant Administrator on the interlocutory appeal does not constitute a final agency order for the purposes of judicial review under § 386.67.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the Administrative Law Judge of an interlocutory appeal of right, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. A party may file an interlocutory appeal with the Assistant Administrator, without the consent of the Administrative Law Judge, before the Administrative Law Judge has made a decision, in any of the following situations:

(1) A ruling or order by the Administrative Law Judge barring a person from the proceedings.

(2) Failure of the Administrative Law Judge to dismiss the proceedings in accordance with § 386.51(b).

(3) A ruling or order by the Administrative Law Judge in violation of § 386.54(b).

(4) Denial by the Administrative Law Judge of a motion to disqualify under § 363.54(c).

(d) *Procedure.* A party must file a notice of interlocutory appeal, with any supporting documents, with the Assistant Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the Administrative Law Judge's decision granting an interlocutory appeal for cause, whichever is appropriate. A party must file a reply brief, if any, with the Assistant Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Assistant

Administrator will render a decision on the interlocutory appeal, on the record and as a party of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The Assistant Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals, and may order such further relief as required.

34. Revise § 386.54 to read as follows:

#### § 386.54 Administrative Law Judge.

(a) *Powers of an Administrative Law Judge.* In accordance with the rules in this subchapter, an Administrative Law Judge may do the following:

(1) Give notice of and hold prehearing conferences and hearings.

(2) Administer oaths and affirmations.

(3) Issue subpoenas authorized by law.

(4) Rule on offers of proof.

(5) Receive relevant and material evidence.

(6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter.

(7) Hold conferences to settle or simplify the issues by the consent of the parties.

(8) Dispose of procedural motions and requests, except motions that under this part are made directly to the Assistant Administrator.

(9) Issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document.

(10) Make findings of fact and conclusions of law, and issue decisions.

(b) *Limitations on the power of the Administrative Law Judge.* The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the agency. If the Administrative Law Judge imposes any sanction not specified in this part, a party may file an interlocutory appeal of right with the Assistant Administrator pursuant to § 386.52. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) *Disqualification.* The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative.

Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Assistant Administrator.

Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

35. Revise § 386.64 to read as follows:

**§ 386.64 Reconsideration.**

(a) Within 20 days following the issuance of the Assistant Administrator's final agency order, any party may petition the Assistant Administrator for reconsideration of his/her findings of fact, conclusions of law, or final agency order. If a civil penalty was imposed, the filing of a petition for reconsideration stays only the payment of the penalty. No other aspects of the final agency order are stayed unless the Assistant Administrator so orders.

(b) In the event a Notice of Final Agency Order is issued by a Service Center as a result of the respondent's failure to file any reply in accordance with § 386.14, the only issue that will be considered upon reconsideration is whether a default has occurred under § 386.14(c).

(c) Either party may serve an answer to a petition for reconsideration within 30 days of the service date of the petition.

(d) Following the close of the 30-day period, the Assistant Administrator will rule on the petition.

(e) The ruling on the petition will be the final agency order. A petition for reconsideration of the Assistant Administrator's ruling will not be permitted.

**§ 386.66 [Removed]**

36. Remove § 386.66.

37. Revise § 386.67 to read as follows:

**§ 386.67 Judicial review.**

(a) Any aggrieved person, who, after an administrative adjudication, is adversely affected by a final agency order issued under 49 U.S.C. 521 may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit where the violation is alleged to have occurred, or where the violator has its principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) Judicial review will be based on a determination of whether or not the findings and conclusions in the final agency order were supported by substantial evidence or otherwise in accordance with law. No objection that has not been raised before the agency will be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of

proceedings under this section will not, unless ordered by the court, operate as a stay of the final agency order of the agency.

38. In Appendix A to Part 386:

Revise section I, remove and reserve section II, and revise section III to read as follows:

**Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders**

*I. Notice to Abate*

*Violation*—Failure to cease violations of the regulations in the time prescribed in the notice. (The time within to comply with a notice to abate shall not begin to run with respect to contested violations, *i.e.*, where there are material issues in dispute under § 386.14, until such time as the violation has been established.)

*Penalty*—reinstatement of any deferred assessment or payment of a penalty or portion thereof.

\* \* \* \* \*

*III. Final Order*

*Violation*—Failure to comply with final agency order.

*Penalty*—Automatic waiver of any reduction in the original claim found to be valid, and immediate restoration to the full amount assessed in the notice of claim.

\* \* \* \* \*

[FR Doc. 04-23393 Filed 10-18-04; 8:53 am]

**BILLING CODE 4910-EX-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Doc. No. ST04-06]

#### Request for an Extension and Revision to a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR Part 110).

**DATES:** Comments received by December 20, 2004, will be considered.

**FOR FURTHER INFORMATION CONTACT:** Contact Bonnie Poli, Pesticide Records Branch, Science and Technology, Agricultural Marketing Service, Suite 203, 8609 Sudley Road, Manassas, Virginia 20110-4582, Telephone (703) 330-7826, Fax (703) 330-6110.

#### SUPPLEMENTARY INFORMATION:

*Title:* Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR Part 110).

*OMB Number:* 0581-0164.

*Expiration Date of Approval:* June 30, 2005.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The regulations, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides" require

certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of two years. The regulations also provide for access to pesticide records or record information by Federal or State officials, or by licensed health care professionals who are needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions.

The Food, Agriculture, Conservation, and Trade Act of 1990, (Pub. L. 101-624; 7 U.S.C. 136i-1), referred to as the FACT Act, directs and authorizes the Department to develop regulations which establish requirements for recordkeeping by all certified applicators of federally restricted use pesticides. A certified applicator is an individual who is certified by the Environmental Protection Agency (EPA) or a State under cooperative agreement with EPA to use or supervise the use of restricted use pesticides.

Section 1491 of the FACT Act directs and authorizes the Department of Agriculture to ensure compliance with regulations as the Department may prescribe, including levying penalties, for failure to comply with such regulations.

Because this is a regulatory program with enforcement responsibility, USDA must ensure that certified applicators are maintaining restricted use pesticide application records for the two year period required by the FACT Act. To accomplish this, USDA must collect information through personal inspections of certified applicator's restricted use pesticide application records.

The information collected is used only by authorized representatives of the USDA (AMS, Science and Technology national staff, other designated Federal employees, and designated State supervisors and their staffs), who are delegated authority to access the records pursuant to section 1491, subsection (b) of the FACT Act. The information is used to administer the Federal Pesticide Recordkeeping Program. The Agency is the primary user of the information, and the secondary user is each designated State agency which has a cooperative agreement with AMS.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated as follows:

(a) Approximately 372,675 certified private applicators (recordkeepers) apply restricted use pesticides. It is estimated that certified private applicators average .415 hours per recordkeeper for a total of 154,660 burden hours. This is a 9,999 decrease in burden hours from the previous collection request due to fewer private applicators in 2003. Of the 372,675 certified private applicators, approximately 4,600 are selected annually for recordkeeping inspections. It is estimated that a private applicator that is subject to a pesticide record inspection has an annual burden of .85 hours, which contributes to a total annual burden of 3,910 hours.

(b) There are approximately 308,443 certified commercial applicators nationally who are required to provide copies of restricted use pesticide application records to their clients. It is estimated that certified commercial applicators have a total annual burden of 1,520,007 hours.

(c) It is estimated that State agency personnel who work through cooperative agreements with AMS to inspect certified private applicator's records have a total annual burden of 8,976 hours. This is a decrease of 2,044 burden hours from the previous collection request due to fewer states participating in cooperative agreements with AMS.

*Respondents:* Certified private and commercial applicators, State governments or employees, and Federal agencies or employees.

*Estimated Number of Respondents:* 685,786—The total number of respondents includes certified commercial applicators, certified private applicators (recordkeepers) and designated State agency personnel utilized to inspect certified private applicator's records.

*Estimated Number of Responses per Respondent:* The estimated number of responses per respondent is as follows:

(a) It is estimated that certified private applicators (recordkeepers), record on an average 5 restricted use pesticide application records annually.

(b) It is estimated that certified commercial applicators provide 616 copies of restricted use pesticide records to their clients annually.

(c) State agency personnel, who work under cooperative agreements with AMS to conduct restricted use pesticide records inspections, have approximately 4,420 responses annually.

*Estimated Total Annual Burden on Respondents:* 1,687,553. This revision in the Total Annual Burden on Respondents decreases the current burden by 12,043 hours due to the decrease in the number of private applicators required to keep records and fewer states participating in the cooperative program.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Bonnie Poli, Pesticide Records Branch, Science and Technology, Agricultural Marketing Service, Suite 203, 8609 Sudley Road, Manassas, Virginia 20110-4582, Telephone (703) 330-7826, Fax (703) 330-6110. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 14, 2004.

**A. J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-23418 Filed 10-19-04; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Farmers' Market Nutrition Program (FMNP) Financial Report (Form FNS-683); WIC Farmers' Market Nutrition Program Recipient Report (Form FNS-203); and WIC Farmers' Market Nutrition Program Regulations

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of FNS to request revisions to currently approved information collections in the WIC Farmers' Market Nutrition Program Financial Report (Form FNS-683); WIC Farmers' Market Nutrition Program Recipient Report (Form FNS-203); and WIC Farmers' Market Nutrition Program Regulations.

**DATES:** Written comments must be received by December 20, 2004.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302. Comments may also be submitted via fax to the attention of Debra R. Whitford at (703) 305-2196 or via e-mail to [wichq-web@fns.usda.gov](mailto:wichq-web@fns.usda.gov). In all cases, including when comments are sent via e-mail, please label your comments as "Proposed Collection of Information: WIC Farmers' Market Nutrition Program."

All written comments will be open for public inspection at the office of the

Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection form and instructions should be directed to: Debra Whitford, (703) 305-2746.

#### SUPPLEMENTARY INFORMATION:

*Title:* The WIC Farmers' Market Nutrition Program Financial Report (Form FNS-683); WIC Farmers' Market Nutrition Program Recipient Report (Form FNS-203); and WIC Farmers' Market Nutrition Program Regulations.

*OMB Number:* 0584-0447.

*Form Numbers:* Form FNS-683, Form FNS-203, and the WIC Farmers' Market Nutrition Program Regulations.

*Expiration Date:* February 28, 2005.

*Type of Request:* Revision to a Currently Approved Collection Form.

*Abstract:* Pursuant to Section 17(m)(8) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(m)(8), 7 CFR 248.23 of the WIC Farmers' Market Nutrition Program (FMNP) regulations requires that certain Program-related information be compiled and submitted to FNS. Each State agency administering the FMNP is required to use FNS-683 and FNS-203 to report financial and participation data to the Secretary as required by 7 CFR part 3016. FNS will use this information for funding and program management decisions. Based on the previous submission of reporting and recordkeeping requirements for the FMNP, 41 State agencies administered the program, including the authorization of 1,622 farmers' markets to accept FMNP coupons. Due to program growth, currently 44 State agencies administer the program, including the authorization of 2,259 farmers' markets, 15,241 farmers, and 1,339 roadside stands authorized to accept FMNP coupons (for a total of 18,839 authorized entities). No new program requirements have been added to change or increase the number of hours per response. Therefore, based on an increase in respondents, and an increased information collection burden on respondents, a revision to the reporting and recordkeeping burden is necessary.

*Form FNS-683 Reporting Burden:* See chart below.

*Form FNS-203 Reporting Burden:* See chart below.

FMNP Regulations Reporting Burden:  
See chart below.

Recordkeeping Burden: See chart  
below.

Total Reporting and Recordkeeping  
Burden: See chart below.

**Information Collection Burden  
WIC Farmers' Market Nutrition Program (FMNP)  
Based on FY 2004 Data**

Section of FMNP Regulations	Title of FMNP Regulations Section	Form No.	Estimated No. of Respondents	Reports Filed Annually	Total Annual Responses	No. of Hours per Response	Est. Total Hours
<b>Reporting:</b>							
248.4	State Plan	None	44	1	44	40	1760
248.10 (a) (2),(3)	Authorization of Farmers/Farmers' Markets/Roadside Stands (1/3 of 18839 authorized entities per year for 3 year periods)	None	6280	1	6280	1	6280
248.10 (e)	Monitoring/Review of Authorized Farmers/Farmers' Markets/Roadside Stands (10% of 18839 authorized entities per year)	None	1884	1	1884	2	3768
248.10 (f)	Coupon Management System	None	44	1	44	5	220
248.11	Financial Management System	None	44	1	44	10	440
248.17(b) (2) (ii)	State Agency Corrective Action Plan	None	9	1	9	10	90
248.18 (b)	Audit Responses	None	13	1	13	15	195
248.23 (b)	Annual Financial Report	FNS 683	44	1	44	3	132
	Annual Report on Recipients, Farmers, Farmers' Markets, Roadside Stands	FNS 203	44	1	44	1	44
	<b>Reporting Information Collection Burden - Subtotal:</b>		<b>8406</b>	<b>9</b>	<b>8406</b>	<b>87</b>	<b>12929</b>
<b>Recordkeeping:</b>							
248.9	Nutrition Education (3 years)	None	44	1	44	1	44
248.10 (b)	Farmer/Farmers Market/Roadside Stand Agreements ( 3 years)	None	44	1	44	2	88
248.10 (e)	Summary of Farmer/Farmers' Market/Roadside Stand Monitoring (3 years)	None	44	1	44	2	88
248.11 (c)	Record of Financial Expenditures (3 years)	None	44	1	44	2	88
	<b>Recordkeeping Information Collection Burden - Subtotal:</b>		<b>176</b>	<b>4</b>	<b>176</b>	<b>7</b>	<b>308</b>
	<b>FMNP Information Collection Burden - Total:</b>		<b>8582</b>	<b>13</b>	<b>8582</b>	<b>94</b>	<b>13237</b>

**BILLING CODE 3410-30-P**

Dated: October 13, 2004.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 04-23420 Filed 10-19-04; 8:45 am]

**BILLING CODE 3410-30-C****DEPARTMENT OF AGRICULTURE****Forest Service****Notice of Resource Advisory Committee Meeting**

**AGENCY:** North Central Idaho Resource Advisory Committee, Kamiah, Idaho, 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 Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Friday, November 5, 2004 in Moscow, Idaho for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on November 5, at the Ameri-Host Inn, 185 Warbonnet Drive, Moscow, ID, begins at 10 a.m. (PST). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

**FOR FURTHER INFORMATION CONTACT:** Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935-2513.

Dated: October 8, 2004.

**Ihor Mereszczak,**

*Acting Forest Supervisor.*

[FR Doc. 04-23408 Filed 10-19-04; 8:45 am]

**BILLING CODE 3410-11-M****DEPARTMENT OF AGRICULTURE****Rural Utilities Service****Western Farmers Electric Cooperative, Inc. and Brazos Electric Power Cooperative, Inc.; Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Impact Statement**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of intent to hold a public scoping meeting and prepare an environmental impact statement (EIS).

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural

Development Utilities Programs, intends to hold a public scoping meeting and prepare an environmental impact statement in connection with potential impacts related to a project being proposed by Western Farmers Electric Cooperative, Inc., (WFEC), of Anadarko, Oklahoma, and Brazos Electric Power Cooperative, Inc., (Brazos) of Waco, Texas. The proposal consists of the construction and operation of a 750 megawatt coal-fired electric generation facility at the existing Hugo Generating Station near Hugo, Oklahoma.

**DATES:** RUS will conduct a public scoping meeting in an open-house format on November 1, 2004, from 7 p.m. to 9 p.m., at the Kiamichi Technical Center, 107 South 15th Street, Hugo, Oklahoma.

**FOR FURTHER INFORMATION CONTACT:** Dennis Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250-1571, telephone: (202) 720-1953 or e-mail:

dennis.rankin@usda.gov, or Gerald Butcher, Senior Environmental Specialist, Western Farmers Electric Cooperative, Inc., P.O. Box 429, Anadarko, OK 73005-0429, telephone: (405) 559-4341, or email: [g\\_butcher@wfec.com](mailto:g_butcher@wfec.com).

**SUPPLEMENTARY INFORMATION:** WFEC and Brazos propose to construct and operate a 750 MW coal-fired electric generation facility at the existing Hugo Generating Station near Hugo, Oklahoma. Construction of the project will require the construction of new electric transmission lines. Studies are currently underway to determine potential connection points and transmission line corridors. As soon as the connection points and transmission line corridors are identified RUS will hold additional public meetings. The schedule developed by WFEC and Brazos would place the facility in commercial operation by 2010. Alternatives to be considered by RUS include no action, purchased power, renewable energy sources, distributed generation, and alternative transmission line routes.

Comments regarding the proposed project may be submitted (orally or in writing) at the public scoping meeting or in writing within 30 days after the November 1, 2004 meeting to RUS at the address provided in this notice.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of a Draft Environmental Impact Statement (EIS). The Draft EIS will be available for review and comment for 45 days. A Final EIS will

then be prepared that considers all comments received. The Final EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft and Final EIS and the ROD will be published in the **Federal Register** and in local newspapers. Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State, and local environmental laws and regulations and completion of the environmental review requirements as prescribed in Title 7 CFR Part 1794, Environmental Policies and Procedures.

Dated: October 5, 2004.

**Glendon D. Deal,**

*Director, Engineering and Environmental Staff, Water and Environmental Programs.*

[FR Doc. 04-23479 Filed 10-19-04; 8:45 am]

**BILLING CODE 3410-15-P****DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

[Docket 34-2004]

**Proposed Foreign-Trade Zone—Conroe (Montgomery County), Texas Extension of Comment Period**

The comment period for the application to establish a general-purpose foreign-trade zone in Conroe (Montgomery County), Texas, submitted by the City of Conroe, Texas (69 FR 51060, 8/17/04), is being extended to November 19, 2004 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted until December 6, 2004. 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 U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

Dated: October 13, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04-23476 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-848]

**Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Rescission of Review, in Part**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** On June 14, 2004, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind*, in Part, 69 FR 32979 (*Preliminary Results*). We invited interested parties to submit comments and only received comments pertaining to the company the review of which we had preliminarily determined to rescind. These comments are addressed below in the section *Final Rescission of Administrative Review, in Part*. The final antidumping duty rates are set forth in the section *Final Results of Review* below. The administrative review covers the period September 1, 2002, through August 31, 2003.

**EFFECTIVE DATE:** October 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Scot Fullerton or Matthew Renkey, Antidumping/Countervailing Duty Operations, Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1386 or (202) 482-2312, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On June 14, 2004, the Department published the preliminary results of its administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. See *Preliminary Results*. The administrative review covers the period September 1, 2002, through August 31, 2003. The review covers the following companies: Hubei Qianjiang Houhu Cold & Processing Factory (Hubei Houhu), Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang), Qingdao Jinyongxiang Aquatic Foods Co., Ltd. (Qingdao JYX), and Nantong Shengfa

Frozen Food Co., Ltd. (Nantong Shengfa). We are rescinding the review for Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor).

**Scope of the Antidumping Duty Order**

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10, 1605.40.10.90, 0306.19.00.10 and 0306.29.00.00. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

**Final Rescission of Administrative Review, in Part***Shanghai Ocean Flavor*

In the Preliminary Results, the Department stated its intention to rescind the administrative review with respect to Shanghai Ocean Flavor because we were conducting a new shipper review that covered all of Shanghai Ocean Flavor's exports during the period of review (POR). See 19 CFR 351.214(j). We received no comments. Subsequent to the *Preliminary Results*, and subsequent to the due date for comments on the *Preliminary Results*, the Department rescinded the new shipper review of Shanghai Ocean Flavor. See *Notice of Rescission of Antidumping Duty New Shipper Review of Shanghai Ocean Flavor International Trading Co., Ltd.: Freshwater Crawfish Tail Meat from the People's Republic of China*, 69 FR 45674 (July 30, 2004). Because we rescinded Shanghai Ocean Flavor's new shipper review after the due date for comments on our preliminary decision to rescind the administrative review, we provided parties with another opportunity to comment on the treatment of Shanghai Ocean Flavor in the administrative review. See the Department's letter to parties regarding the treatment of Shanghai Ocean Flavor, dated September 3, 2004.

On September 10, 2004, the petitioners withdrew their request for an

administrative review of Shanghai Ocean Flavor. Shanghai Ocean Flavor did not submit any comments on, nor did it object to, petitioners' withdrawal of their review request. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. Although the request for rescission was made after the 90-day deadline, in accordance with 19 CFR 351.213(d)(1), the Secretary may extend this time limit if the Secretary decides it is reasonable to do so. The petitioners were the only parties to request an administrative review of Shanghai Ocean Flavor. Moreover, no party commented on petitioners' withdrawal of their review request. Therefore, we find it reasonable to accept the petitioners' withdrawal of their request for a review. Consequently, we are rescinding this review of the antidumping duty order on freshwater crawfish tail meat for Shanghai Ocean Flavor covering the period September 1, 2002, through August 31, 2003.

**Application of Facts Available**

*Nantong Shengfa, Hubei Houhu, Shouzhou Huaxiang, and Qingdao JYX,*

The Department received no comments on its preliminary determination to apply adverse facts available (AFA) to Nantong Shengfa, Hubei Houhu, Shouzhou Huaxiang, and Qingdao JYX. Therefore, we have not altered our decision to apply AFA to these companies for these final results, in accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Tariff Act of 1930, as amended (the Act). As AFA, the Department is assigning these companies the rate of 223.01 percent the highest rate determined in any segment of this proceeding. See *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (*99-00 Final Results*). For a complete discussion of the Department's reasons for applying total AFA, not granting a separate rate to these companies, and the selection and corroboration of the AFA rate, see the *Preliminary Results*.

**Final Results of Review**

For these final results we determine that the following dumping margin exists:

Manufacturer and Exporter	Period of Review	Margin (percent)
PRC–Wide Rate <sup>1</sup> .....	9/1/02–8/31/03	223.01

<sup>1</sup> Nantong Shengfa, Hubei Houhu, Shouzhou Huaziang, and Qingdao JYX are now included in the PRC–wide rate.

### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period; (2) for PRC exporters which do not have a separate rate, including the exporters named in the footnote above, the cash deposit rate will be the PRC–wide rate of 223.01 percent; and (3) for all other non–PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

### Assessment of Antidumping Duties

The Department shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For assessment purposes, we will direct CBP to assess the *ad valorem* rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. Since we have rescinded the administrative review of Shanghai Ocean Flavor, we will issue assessment instructions to CBP within 15 days of publication of this notice to liquidate the entries from this company during the POR at the cash deposit rate in effect on the date of entry.

### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping

duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 12, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–2732 Filed 10–19–04; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–863]

#### Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of Second Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on honey from the People's Republic of China (PRC) until no later than December 15, 2004. The period of review is December 1, 2002, through November 30, 2003.

**EFFECTIVE DATE:** October 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anya Naschak at (202) 482–6375 or Nina Boughton at (202) 482–8173; Antidumping and Countervailing Duty Operations Office 9, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of our regulations allow the Department to extend the 245–day period to 365 days and the 120–day period to 180 days.

### Background

On December 10, 2001, the Department published in the **Federal Register** an antidumping duty order covering honey from the PRC. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 2, 2003, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 67401. On December 29, 2003, Anhui Honghui Foodstuff (Group) Co., Ltd. (“Anhui Honghui”); Eurasia Bee's Products Co., Ltd. (“Eurasia”); and Jiangsu Kanghong Natural Healthfoods Co., Ltd. (“Jiangsu Kanghong”) requested that the Department conduct an administrative review of each respective company's entries during the POR. On December 31, 2003, the American Honey Producers Association and the Sioux Honey Association (collectively, the “petitioners”), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of entries of subject merchandise made during the

POR by 20 Chinese producers/exporters, which included Anhui Honghui, Eurasia, and Jiangsu Kanghong, as well as the following companies: Anhui Native Produce Import & Export Corp. ("Anhui Native"); Cheng Du Wai Yuan Bee Products Co., Ltd. ("Cheng Du"); Foodworld International Club, Ltd. ("Foodworld"); Henan Native Produce and Animal By-Products Import & Export Company ("Henan"); High Hope International Group Jiangsu Foodstuffs Import & Export Corp. ("High Hope"); Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp. ("Inner Mongolia"); Inner Mongolia Youth Trade Development Co., Ltd. ("Inner Mongolia Youth"); Jinan Products Industry Co., Ltd. ("Jinan"); Jinfu Trading Co., Ltd. ("Jinfu"); Kunshan Foreign Trade Company ("Kunshan"); Native Produce and Animal Import & Export Co. ("Native Produce"); Shanghai Eswell Enterprise Co., Ltd. ("Shanghai Eswell"); Shanghai Shinomi International Trade Corporation ("Shanghai Shinomi"); Shanghai Xiuwei International Trading Co., Ltd. ("Shanghai Xiuwei"); Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Dubao"); Wuhan Bee Healthy Company, Ltd. ("Wuhan Bee"); and Zhejiang Native Produce and Animal By-Products Import & Export Group Corp. ("Zhejiang"). On January 14, 2004, the petitioners filed a letter withdrawing their request for review of Henan, High Hope, Jinan, and Native Produce. On January 22, 2003, the Department initiated the review for the remaining 16 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2004).

On March 10, 2004, the Department rescinded the review for Foodworld and Anhui Native. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 11383 (March 10, 2004).

On April 27, 2004, the Department rescinded the review for Anhui Honghui, Cheng Du, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 22760 (April 27, 2004).

On June 1, 2004, the Department published an extension of the time limits to complete these preliminary results. *See Honey from the People's Republic of China: Extension of Time Limit of Preliminary Results of Second Antidumping Duty Administrative Review*, 69 FR 30879 (June 1, 2004). The

deadline for completion of the Preliminary Results was extended until November 19, 2004.

#### **Extension of Time Limits for Preliminary Results**

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the current time limit. The Department requires additional time to analyze all questionnaire responses and issue appropriate supplemental questionnaires. In particular, the Department is considering the appropriate surrogate value for raw honey. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is further extending the time limit for the completion of these preliminary results by an additional 26 days. The preliminary results will now be due no later than December 15, 2004.

The final results will, in turn, be due 120 days after the date of issuance of the preliminary results, unless extended.

Dated: October 14, 2004.

**Jeffrey A. May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E4-2728 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[A-588-850]**

#### **Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan: Notice of Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 20, 2004.

**SUMMARY:** On July 28, 2004, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan, covering the period June 1, 2003, through May 31, 2004. *See Notice of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* 69 FR 45010 (July 28, 2004) (*Initiation Notice*). The review was

requested by United States Steel Corporation (the petitioner). We are now rescinding this review as a result of the petitioner's withdrawal of its request for an administrative review.

#### **FOR FURTHER INFORMATION CONTACT:**

Constance Handley or Shane Subler, at (202) 482-0631 or (202) 482-0189, respectively, AD/CVD Operations Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In accordance with 19 CFR 351.213(b), on June 30, 2004, United States Steel Corporation requested an administrative review of the antidumping duty order for JFE Steel Corporation, Nippon Steel Corporation, NKK Tubes, and Sumitomo Metal Industries, Ltd. on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan. On July 28, 2004, in accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of an administrative review of this order for the period June 1, 2003, through May 31, 2004. *See Initiation Notice*. On September 27, 2004, United States Steel Corporation timely withdrew its request for an administrative review of certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan.

##### **Rescission of Review**

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. United States Steel Corporation withdrew its request within the 90-day period and was the only party to request this review. Accordingly, we are rescinding this review. The Department will issue appropriate assessment instructions to U.S. Border and Customs Protection within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely

written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 15, 2004.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E4-2729 Filed 10-19-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-850]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary determination of sales at less than fair value.

**SUMMARY:** We preliminarily determine that live swine from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended ("the Act").

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination within 135 days of the date of publication of this preliminary determination in the **Federal Register**.

**EFFECTIVE DATE:** October 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cole Kyle, Ryan Langan, or Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1503, (202) 482-2613, or (202) 482-1276, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigation: Live Swine from Canada*, 69 FR 19815 (April 14, 2004) ("*Initiation Notice*"), the following events have occurred:

On April 26, 2004, we solicited comments from interested parties regarding the criteria to use for model-matching purposes. We received comments from all interested parties on our proposed matching criteria in April and May, 2004.

On May 4, 2004, the Government of Canada ("GOC") submitted a scope exclusion request. On August 4, 2004, the petitioners submitted comments on the GOC's scope exclusion request. See "Scope Comments" section, below. We held discussions on the issue of model matching with officials from the United States Department of Agriculture ("USDA") and industry experts on May 6 and 11, 2004, respectively.

On May 14, 2004, we selected Excel Swine Services, Inc. ("Excel"), Ontario Pork Producers' Marketing Board ("Ontario Pork"), Hytek, Inc. ("Hytek"), and Premium Pork Canada, Inc. ("Premium Pork") as mandatory respondents in this proceeding. For further discussion, see Memorandum to Jeffrey May, "Respondent Selection" dated May 14, 2004 ("*Respondent Selection Memorandum*"), which is located in the Department of Commerce's ("the Department") Central Records Unit, located in Room B-099 of the main Department building ("CRU"), and the "Respondent Selection" section below.

On May 17, 2004, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of live swine from Canada are materially injuring the United States live swine industry (see ITC Investigation Nos. 701-TA-438 and 731-TA-1076 (Publication No. 3693)).

We issued the antidumping questionnaire to Excel, Ontario Pork, Hytek, and Premium Pork on May 27, 2004. Also, on May 27, 2004, the Department adopted the model match criteria and hierarchy for this proceeding. See Memorandum to Susan Kuhbach, "Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire," dated May 27, 2004, which is on file in the CRU.

On June 4, 2004, Ontario Pork submitted comments regarding the selection of companies to respond to the Department's cost questionnaire. On June 16, 2004, we solicited comments from the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio

Pork Producers Council, and 119 individual producers of live swine<sup>1</sup> (hereinafter "the petitioners"), Excel, and Ontario Pork on the methodology for selecting cost respondents. We received parties' comments on June 21, 2004, and rebuttal comments on June 24 and June 30, 2004.

On June 21, 2004, Premium Pork submitted a request to the Department that it use Premium Pork's transfer price as the constructed export price rather than deriving a constructed export price. On June 29, 2004, the petitioners submitted comments on Premium's request. The Department rejected this request.

On July 2, 2004, the Office of Accounting notified Ontario Pork and Excel of the companies selected to respond to the Department's cost questionnaire. This selection is described in a July 15, 2004 Memorandum to Jeffrey May, entitled "*Cost Respondent Selection Memo*."

In June and July, 2004, the Department received responses to sections A, B, and C of the Department's

<sup>1</sup> Alan Christensen, Alicia Prill-Adams, Aulis Farms, Baarsch Pork Farm, Inc., Bailey Terra Nova Farms, Bartling Brothers Inc., Belstra Milling Co. Inc., Berend Bros. Hog Farm LLC, Bill Tempel, BK Pork Inc., Blue Wing Farm, Bornhorst Bros, Brandt Bros., Bredehoeft Farms, Inc., Bruce Samson, Bryant Premium Pork LLC, Buhl's Ridge View Farm, Charles Rossow, Cheney Farms, Chinn Hog Farm, Circle K Family Farms LLC, Cleland Farm, Clougherty Packing Company, Coharie Hog Farm, County Line Swine Inc., Craig Mensick, Daniel J. Pung, David Hansen, De Young Hog Farm LLC, Dean Schrag, Dean Vantiger, Dennis Geinger, Double "M" Inc., Dykhuis Farms, Inc., E & L Harrison Enterprises, Inc., Erle Lockhart, Ernest Smith, F & D Farms, Fisher Hog Farm, Fitzke Farm, Fultz Farms, Gary and Warren Oberdieck Partnership, Geneseo Pork, Inc., GLM Farms, Greenway Farms, H & H Feed and Grain, H & K Enterprises, LTD, Ham Hill Farms, Inc., Harrison Creek Farm, Harty Hog Farms, Heartland Pork LLC, Heritage Swine, High Lean Pork, Inc., Hilman Schroeder, Holden Farms Inc., Huron Pork, LLC, Hurst AgriQuest, J D Howerton and Sons, J. L. Ledger, Inc., Jack Rodibaugh & Sons, Inc., JC Howard Farms, Jesina Farms, Inc., Jim Kemper, Jorgensen Pork, Keith Berry Farms, Kellogg Farms, Kendale Farm, Kessler Farms, L.L. Murphrey Company, Lange Farms LLC, Larson Bros Dairy Inc., Levelvue Pork Shop, Long Ranch Inc., Lou Stoller & Sons, Inc., Luckey Farm, Mac-O-Cheek, Inc., Martin Gingerich, Marvin Larrick, Max Schmidt, Maxwell Foods, Inc., Mckenzie-Reed Farms, Meier Family Farms Inc., MFA Inc., Michael Farm, Mike Bayes, Mike Wehler, Murphy Brown LLC, Ned Black and Sons, Ness Farms, Next Generation Pork, Inc., Noecker Farms, Oaklane Colony, Orangeburg Foods, Oregon Pork, Pitstick Pork Farms Inc., Prairie Lake Farms, Inc., Premium Standard Farms, Inc., Prestage Farms, Inc., R Hogs LLC, Rehmeier Farms, Rodger Schamberg, Scott W. Tapper, Sheets Farm, Smith-Healy Farms, Inc., Square Butte Farm, Steven A. Gay, Sunnycrest Inc., Trails End Far, Inc., TruLine Genetics, Two Mile Pork, Valley View Farm, Van Dell Farms, Inc., Vollmer Farms, Walters Farms LLP, Watertown Wieners, Inc., Wen Mar Farms, Inc., William Walter Farm, Willow Ridge Farm LLC, Wolf Farms, Wondraful Pork Systems, Inc., Wooden Purebred Swine Farms, Woodlawn Farms, and Zimmerman Hog Farms.

original questionnaire from Excel, Ontario Pork, Premium Pork, and Hytek. The Department issued supplemental questionnaires to the respondents in July, August, and September 2004, and received responses in September and October 2004.

Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), we determined that this proceeding is extraordinarily complicated and that additional time was necessary to make our preliminary determination. Therefore, on August 9, 2004, we postponed the preliminary determination until no later than October 14, 2004. See *Notice of Postponement of Preliminary Antidumping Duty Determination: Live Swine from Canada*, 69 FR 48201 (August 9, 2004).

In September and October, 2004, the Department received pre-preliminary determination comments from Excel, Ontario Pork, Hytek, Premium Pork, and the petitioners regarding the Department's calculation methodologies for the preliminary determination.

#### Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months.

On September 21, 2004, we received requests from Excel, Ontario Pork, Hytek, and Premium Pork to postpone the final determination to 135 days after the date of publication of this preliminary determination notice. In their requests, the respondents consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative and the request for postponement is made by exporters who account for a significant proportion of exports of the subject merchandise we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this

preliminary determination in the **Federal Register**.

#### Scope of Investigation

The products covered by this investigation are all live swine from Canada except breeding swine. Live swine are defined as four-legged, monogastric (single-chambered stomach), litter-bearing (litters typically range from 8 to 12 animals), of the species *sus scrofa domesticus*. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* ("HTSUS") subheadings 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, 0103.92.0090.<sup>2</sup>

Specifically excluded from this scope are breeding stock, including U.S. Department of Agriculture ("USDA") certified purebred breeding stock and all other breeding stock. The designation of the product as "breeding stock" indicates the acceptability of the product for use as breeding live swine. This designation is presumed to indicate that these products are being used for breeding stock only. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application, end-use certification for the importation of such products may be required.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

#### Scope Comments

In the *Initiation Notice*, we invited comments on the scope of this proceeding. As noted above, on May 4, 2004, we received a request from the GOC to amend the scope of this investigation and the companion countervailing duty ("CVD") investigation. Specifically, the GOC requested that the scope be amended to exclude hybrid breeding stock. According to the GOC, domestic producers use hybrid breeding stock instead of purebred stock to strengthen their strains of swine. The GOC stated that no evidence was provided of injury, or threat of injury, to the domestic live swine industry from the importation of hybrid breeding stock. Furthermore, the GOC noted that the petition excluded USDA certified purebred breeding swine from the scope of the above-mentioned investigations. The GOC

argued that the documentation which accompanies imported hybrid breeding swine makes it easy to distinguish hybrid breeding swine from other live swine.

On August 4, 2004, the petitioners submitted a response to the GOC's scope exclusion request and proposed modified scope language. The petitioners stated they do not oppose the GOC's request to exclude hybrid breeding stock, but are concerned about the potential for circumvention of any antidumping ("AD") or CVD order on live swine from Canada through non-breeding swine entering the domestic market as breeding stock. Thus, the petitioners proposed modified scope language that would require end-use certification if the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application. Moreover, on July 30, 2004, the petitioners submitted a request to the ITC to modify the HTSUS by adding a statistical breakout that would separately report imports of breeding animals other than purebred breeding animals, allowing the domestic industry to monitor the import trends of hybrid breeding stock.

On August 9, 2004, both the GOC and the respondent companies submitted comments to respond to the petitioners' proposed revised scope. Both the GOC and the respondent companies stated that they generally agree with the petitioners' modified scope language, with the two following exceptions: (1) They contend that the petitioners' language setting forth the mechanics of any end use certification procedure is premature and unnecessary, and (2) they argue that the petitioners' language stating that "all products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope" is unnecessary because the physical description of the merchandise in scope remains determinative.

On August 12, 2004, the petitioners submitted a response to the August 9, 2004, comments from the GOC and the respondents. The petitioners reiterated their support for their proposed modification to the scope language. They argued that (1) their proposed language has been used before by the Department in other proceedings; (2) since U.S. importers bear the burden of paying the duties, the importers should be required to certify to the end use of the product; and (3) the "physical description" language provides an important clarification that all live

<sup>2</sup> Prior to June 30, 2003, HTSUS subheadings 0103.91.0010, 0103.91.0020, and 0103.91.0030 were all included under one heading, HTSUS 0103.91.0000.

swine, except for the excluded products, are included in the scope.

As further discussed in the August 16, 2004, memorandum entitled "*Scope Exclusion Request: Hybrid Breeding Stock*" (on file in the Department's CRU), we revised the scope in both the AD and companion CVD proceedings based on the above scope comments. The revised scope language is included in the "Scope of Investigation" section, above.

#### Period of Investigation

The period of investigation ("POI") is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on March 5, 2004.

#### Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding, including the industry practice of sourcing subject merchandise from multiple producers, the intricate corporate structures of exporters and producers, and the potential for collapsing respondents with multiple affiliated producers/exporters, as well as the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Therefore, we selected the four producers/exporters with the greatest export volumes to receive antidumping duty questionnaires and, as such, to be mandatory respondents.

As discussed in the *Respondent Selection Memorandum*, we selected these companies because they were the largest Canadian exporters of subject merchandise who also had their own, or

affiliated party, production of the merchandise under investigation. In addition, we did not select as respondents trading companies that did not produce (or have affiliated producers that produced) live swine because of the need to gather information from unaffiliated producers that supplied these trading companies. Further, we did not select M&F Trading, Inc. ("M&F") and Maximum Swine Marketing, Inc. ("Maximum") as respondents because they were not engaged in the production of live swine. Instead, M&F and Maximum acted merely as brokers between the customer and supplier (*i.e.*, producer), and the customer and supplier set the terms of sale independently of M&F or Maximum. We noted that this selection methodology was consistent with that used in the previous antidumping duty investigation of live cattle from Canada. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Live Cattle from Canada*, 64 FR 36847 (July 8, 1999), citing a memorandum on the official file, "Selection of Respondents," dated March 1, 1999, affirmed in the *Notice of Final Determination of Sales at Less than Fair Value: Live Cattle from Canada*, 64 FR 56739 (October 21, 1999).

Excel was included in the list of producing exporters and, after excluding M&F and Maximum, Excel was among the four largest exporters. We believed that Excel was a producing exporter because Excel reported that it was "partly" a producer of the merchandise under investigation because of common shareholders among Excel and its suppliers. Excel also reported that it was a "cooperative-like" company. Based on our understanding of Excel's situation at the time of our respondent selection, Excel was included as a mandatory respondent.

The Department believed that the selection of Excel as a mandatory respondent would allow the Department to collect complete data for the "largest volume of subject merchandise from the exporting country that can reasonably be examined." *See Respondent Selection Memorandum* at 5. However, given the information we obtained from Excel after its selection as a mandatory respondent, we preliminarily determine that Excel should not have been included in the list of producing exporters nor should we have selected Excel as a mandatory respondent.

The record evidence shows that Excel's role in sales of merchandise produced by unaffiliated producers is that of a broker rather than that of a central selling unit in a "cooperative-like" company. We have reached this

conclusion because the information on the record indicates that for sales of merchandise produced by unaffiliated companies, Excel merely generates sales invoices and arranges transportation in accordance with the terms of the sales contracts. These sales contracts are between swine producers unaffiliated with Excel and customers (also not affiliated with Excel). Excel is not a signatory to these sales contracts. Consequently, Excel does not determine or influence the pricing or other terms of sale for sales of merchandise produced by companies that are not affiliated with Excel. We also preliminarily determine that the unaffiliated suppliers who sold their merchandise through Excel knew, at the time of the sale, that the merchandise was destined for the United States. Therefore, Excel cannot be considered the exporter for these sales.

Excel's remaining sales to the United States, *i.e.*, Excel's sales of live swine produced by affiliated suppliers, are extremely small such that Excel does not fall among the largest exporters of live swine to the United States. Had we known at that time of our selection of respondents that Excel's volume of sales to the United States was so low, we would not have selected Excel as a mandatory respondent.

Excel's situation is further complicated by the fact that, based on our understanding of Excel's "cooperative-like" relationship to its unaffiliated suppliers, we selected a subset of those suppliers to respond to our cost questionnaires. *See* "Background" section, above, and *Cost Respondent Selection Memo*. None of the selected suppliers is affiliated with Excel and, as explained above, all had knowledge that their swine sales were destined for the United States. Therefore, we preliminarily determine that section 773(b) of the Act precludes us from using those suppliers' costs in analyzing whether sales made by Excel in Canada of live swine produced by its affiliated suppliers are below cost.

Given the very small volume of Excel's sales to the United States of merchandise produced by affiliated producers, plus our inability to perform a cost test on its home market sales, we are rescinding our selection of Excel as a mandatory respondent. Consequently, we do not plan to verify Excel's response and we are assigning Excel the "all-others" rate, the rate Excel would have received had it not initially been selected as a mandatory respondent. This is not intended to be punitive to Excel. Instead, the rescission merely restores Excel to the position it would have been in, had all of the information

now on the record about its organization and sales processes been known to the Department at the time of the respondent selection. Nor do we believe that adverse, punitive, action is required in this situation because there is no record evidence that Excel deliberately misled the Department.

Although we are eliminating Excel from our analysis, we preliminarily determine that the Department is meeting the statutory obligation to examine exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined under section 777A(c)(2) of the Act by investigating the sales of the remaining respondents, Ontario Pork, Hytek and Premium Pork. That is because the volume of sales for which Excel is the exporter is very small, so that its elimination has little effect on the coverage of our investigation. We also note that the products exported by the remaining respondents during the POI cover the entire scope of the subject merchandise. Therefore, the "all-others" rate will reflect sales of all of the subject merchandise.

#### Fair Value Comparisons

To determine whether sales of live swine from Canada to the United States were made at less than fair value ("LTFV"), we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(I) of the Act, we compared POI weighted-average EPs and CEPs to NVs. Any specific adjustments to the EP, CEP and NV calculations are discussed in the October 14, 2004, respondent-specific calculation memoranda ("*Calculation Memoranda*"), which are on file in the CRU.

In an October 1, 2004, submission, Ontario Pork requested that the Department compute monthly weighted-average EPs and NVs, rather than POI averages, for comparison purposes. Ontario Pork states that as a result of fluctuations in prices in the U.S. and home markets, and skewed sales volumes during the POI, the Department's normal methodology will lead to a severely distorted measure of dumping.

Ontario Pork contends that the Department has the authority to deviate from its normal practice "when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation," under section

351.414(d)(3) of the Department's regulations. Ontario Pork points to *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27373 (May 19, 1997) ("Preamble"), in which the Department explained that "[i]n general, we believe it is appropriate to average prices across the period of investigation, though there are circumstances in which other averaging periods are more appropriate. Accordingly, the proposed rule is designed to ensure that the time periods over which price averages and comparisons are made comports with circumstances of the case, while maintaining a preference for period wide averages." Ontario Pork also cites *United States—Antidumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WTO/DS179/R (December 22, 2000) ("WTO Ruling"), in which the WTO Panel provided an example of how averaging on a POI basis, where price and volume fluctuations occur in both the export and home markets, can distort dumping margin calculations.

The petitioners responded to Ontario Pork's comments on October 6, 2004. They argue that there is no basis for using monthly averages in this case, particularly given that the Department rarely exercises its authority to deviate from POI averages, and only does so in extreme cases. One such case occurred when the value of the Korean won fell precipitously against the U.S. dollar during the period of investigation in *Stainless Steel Sheet and Strip in Coils from Korea; Final Determination of Sales at Less Than Fair Value*, 64 FR 30664, 30676 (June 8, 1999) ("*Stainless Steel*"). In *Stainless Steel* the Department averaged prices for two distinct periods, before and after the precipitous decline in the won-dollar exchange rate. In this case however, the petitioners contend, there is no compelling reason to average prices on a monthly basis, particularly given that U.S. and home market prices are tied to the same daily USDA market price benchmarks. In addition, the petitioners argue that Ontario Pork's prices varied on many bases—annually, monthly, weekly and daily—and that these variations do not constitute an extreme case that necessitates a departure from the Department's preferred averaging period.

We note that Ontario Pork did not raise this issue with the Department until shortly before the deadline for this preliminary determination and, therefore, we have not had sufficient time to consider the implications of Ontario Pork's proposal. In addition, while the petitioners have commented on this issue, other interested parties

have not had sufficient time or information to provide the Department with comments on Ontario Pork's proposal. Therefore, we have not adopted monthly averaging periods in our analysis of Ontario Pork's sales for this preliminary determination.

While we acknowledge the Department's authority to calculate averages over shorter periods than the POI, our practice is generally to calculate POI averages except in certain situations, such as when there are external events that clearly define distinct periods for which different market conditions prevailed. Also, with the exception of our use of monthly averages in situations with high inflation, we have not used monthly averaging periods.

Therefore, we intend to consider this issue further for the final determination and invite parties to comment further on the circumstances in which it would be appropriate for the Department to select shorter averaging periods, and whether the use of shorter averaging periods should be limited to situations where the shorter periods are defined by external events.

#### Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The Act contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Ontario Pork and Hytek each had a viable home market for sales of subject merchandise. In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* and *Calculation of Normal Value Based on Constructed Value* sections below.

For Premium Pork, we preliminarily determine that the home market is not an appropriate comparison market because a particular market situation exists with respect to Premium Pork's sales in Canada. Premium Pork is in the business of producing isoweans for export to the United States and raising live swine for sale as market hogs in the United States. On the other hand, Premium Pork's home market sales

overwhelmingly consist of substandard and defective swine, and spent sows and boars (*i.e.*, sows and boars that are no longer useful in producing isoweans for raising market hogs). Therefore, the company's sales in Canada are incidental to the respondent and, moreover, are not appropriate for comparison with the U.S. sales. As further evidence of Premium Pork's focus on the U.S. market, the company did not have sales to any third country market during the POI. Therefore, because a particular market situation exists with respect to Premium Pork's home market sales and because Premium Pork did not have third country sales during the POI, Premium Pork's NV is based on constructed value ("CV"). See Memorandum to Jeffrey May, "Appropriateness of Canadian Market as a Comparison Market for Premium Pork," dated October 14, 2004.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Ontario Pork and Hytek in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For the reasons discussed above, we did not consider products produced and sold by Premium Pork in the home market. We compared U.S. sales to sales of identical merchandise made in the home market, where possible. Where there were no sales of identical merchandise in the home market, made in the ordinary course of trade, to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

To identify identical and similar merchandise for purposes of comparing U.S. and home market sales, we considered several product characteristics. Specifically, we asked the respondents to report information on type (*e.g.*, gilt/barrow, sow or boar), weight, and weight band, for each sale made during the POI.

### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to

the United States, as adjusted under subsection 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the prices charged to the first unaffiliated customer in the United States or for shipment to the United States. We found that all the respondents made EP sales during the POI. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States, or to unaffiliated customers in Canada for exportation to the United States, prior to the date of importation. Moreover, the constructed export methodology was not otherwise warranted based on record evidence. We also found that Hytek and Premium Pork made CEP sales during the POI. These sales are properly classified as CEP sales because they were made through the respondents' respective U.S. affiliate(s).

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses, and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted the cost of further manufacturing, and direct and indirect selling expenses incurred in selling the subject merchandise to the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

#### (1) Ontario Pork

Ontario Pork is, by law, the only entity permitted to sell slaughter hogs produced in Ontario, and Ontario Pork controls the pricing and terms of sale for all of these sales. Therefore, we have treated Ontario Pork as the exporter for these sales.

We based EP for Ontario Pork on the delivered price to unaffiliated purchasers in the United States, as adjusted upon receipt to reflect grading by the customer. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These expenses included, where appropriate, foreign inland freight

(trucking from farm to assembler), warehousing/assembly fees, international freight, freight insurance, and brokerage and handling (including U.S. duties, customs fees, and fees mandated by the U.S. Pork Promotion Research and Consumer Information Act of 1985). See Calculation Memoranda.

#### (2) Hytek

As stated above, Hytek made both EP and CEP sales during the POI. We treated Hytek's sales to Canadian trading companies not affiliated with Hytek as EP sales because Hytek knew, at the time of the sale to the trading companies, that the merchandise was destined for the United States. We calculated a CEP for sales made by Hytek's affiliated reseller or affiliated further processor after the importation of the subject merchandise into the United States. We disregarded sales by Hytek of live swine from producers not affiliated with Hytek because those producers knew that the merchandise was destined for the United States at the time of sale through Hytek. Therefore, the U.S. sales analyzed for Hytek consist of subject merchandise that was produced by Hytek or one of its affiliates.

For EP and CEP transactions, we made deductions from the starting price for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Act. The billing adjustments were made, where appropriate, for invoice corrections, end-of-month accounting adjustments, quantity discrepancies, product quality, under-weight pigs, errant products, incorrect weight-band, insurance premiums, breeder adjustments, and farrowed pigs. Movement expenses included inland freight (including insurance) in Canada and in the United States, international freight, brokerage fees, U.S. customs duties and fees (including USDA vet fees).

For CEP sales, in accordance with section 772(d)(1) of the Act, we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct expenses (National Pork Producer's Council ("NPPC") fees,<sup>3</sup> bank charges and credit expenses), the cost of further manufacturing, and indirect selling expenses incurred by the affiliated further processor in the United States. We also deducted from CEP an amount

<sup>3</sup> Despite Hytek's claim that NPPC fees were used to fund the antidumping duty case against live swine from Canada, the record evidence does not demonstrate that NPPC fees collected during the POI were spent for that purpose. Therefore, we have deducted NPPC fees as a direct selling expense.

for profit, in accordance with section 772(d)(3) of the Act.

### (3) Premium Pork

As stated above, Premium Pork made both EP and CEP sales during the POI. We disregarded sales by Premium Pork of subject merchandise from producers not affiliated with Premium Pork because those producers knew that the merchandise was destined for the United States at the time of sale to Premium Pork. Therefore, the U.S. sales analyzed for Premium Pork consist of sales of subject merchandise produced by Premium Pork's affiliates.

For EP and CEP transactions, we made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight (including insurance) in Canada and in the United States, international freight, brokerage fees incurred in Canada and in the United States, and U.S. customs duties and fees.

For CEP sales, in accordance with section 772(d)(1) of the Act, we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct expenses (pork check-off fees<sup>4</sup> and credit expenses), and the cost of further manufacturing incurred by the affiliated further manufacturer in the United States. Because no profit was earned on these sales, none was deducted. See Statement of Administrative Action, H. DOC. No. 103-465, Vol. 1 at 669 (1994) reprinted in *U.S.C.A.N.* 3773, 4163 (hereinafter, "SAA").

Among its sales of further manufactured products, Premium Pork reported sales of substandard or defective merchandise. Because (1) the matching criteria for this investigation do not currently account for substandard or defective merchandise; (2) no interested parties have provided comments on the appropriate methodology to match these sales; and (3) the quantity of such sales does not constitute a significant percentage of Premium Pork's U.S. sales, we have excluded these sales from our analysis for purposes of the preliminary determination. We invite comments from the interested parties regarding our treatment of these sales for our consideration in the final determination.

<sup>4</sup>Despite Premium Pork's claim that the "pork check-off" fees (*i.e.*, NPPC fee) were used to fund the antidumping duty case against live swine from Canada, the record evidence does not demonstrate that NPPC fees collected during the POI were spent for that purpose. Therefore, we have deducted NPPC fees as a direct selling expense.

In comments submitted to the Department on September 28, 2004, the petitioners assert that the Department should reduce Premium Pork's U.S. sales prices for CEP transactions to account for rejects. However, Premium Pork reported that it excluded rejected hogs from the sales and production quantities reported to the Department. Therefore, we did not make a downward adjustment to Premium Pork's U.S. sales prices. We intend to confirm the quantities reported at verification.

### Normal Value

#### A. Cost of Production Analysis

As noted in the initiation notice, we found that there were reasonable grounds to believe or suspect that sales of live swine in the home market were made at prices below their cost of production ("COP"). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales of live swine were made at prices below their COP.

As discussed above, Ontario Pork is the sole marketer of slaughter hogs produced in Ontario. Because there are nearly 3,000 slaughter hog producers in Ontario, it was not possible for the Department to examine the costs of all Ontario Pork suppliers. Therefore, the Department developed a methodology to calculate a representative COP and CV for the merchandise sold by Ontario Pork.

To do this, we excluded all producers with 1,000 or fewer hogs delivered per year and producers with more than 200,000 hogs delivered per year. We then stratified the remaining producers of live swine into large (*i.e.*, delivered 10,000 or more hogs annually) and small (*i.e.*, delivered less than 10,000 hogs annually) producers. Pursuant to this methodology, we selected four producers from the list of Ontario Pork's hog suppliers, two of which are small producers and two of which are large producers. For further discussion, see Cost Respondent Selection Memo.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a single weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative ("G&A") expenses, interest expenses, and home market packing costs for the selected cost respondents. To calculate the weighted average COP for Ontario Pork, we first took a simple average of the COPs within each stratum (*i.e.*, size group). Then, we weight averaged each

stratum's simple average cost by the total respective volume of hogs delivered within each stratum.

#### 2. Cost Respondent Adjustments

We relied on the COP data submitted by each cost respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or where the costs otherwise required adjustment, as discussed below:

##### a. Common to All Swine Producers for All Respondents

1. Some of the producers expensed in their entirety the acquisition cost of the sows and boars used for breeding purposes during the POI. Other producers treated the sows and boars used for breeding purposes as productive assets and amortized the acquisition cost over the breeding life of the hogs. For the preliminary determination, we capitalized the cost of acquiring the sows and boars used for breeding purposes (net of salvage values) and amortized the cost over their productive breeding life. The amortization expenses and all other costs incurred in the sow barns during the POI were allocated to the weanlings produced during the POI. See Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination," dated October 14, 2004 ("*COP/CV Adjustments Memorandum*").

2. As we are treating the sows and boars as productive assets and we have assigned the portion of the cost that is recovered at the end of their productive life, the salvage value (*i.e.*, sales value), to the cost of the culled sows and boars. See *COP/CV Adjustments Memorandum*.

##### b. Respondent Specific Adjustments

If a particular cost respondent is not mentioned below, we only made the common cost adjustments, discussed above, for that cost respondent.

##### *Ontario Pork*:<sup>5</sup>

##### Farm A

1. We allocated Farm A's indirect costs based on the direct costs incurred in each of the different farm operations. We did not include the cost of feeder purchases or the labor costs imputed for

<sup>5</sup>Due to the proprietary nature of the name of each producer, we have assigned an alphabetic character to each farmer ("cost respondent") that will be used throughout this notice when referring to that specific farmer. A list or code key identifying the name associated with each cost respondent number can be found in the *COP/CV Adjustments Memorandum*.

the owners of Farm A in the direct costs used in the allocation ratio.

2. We adjusted the reported financial expense ratio to include an imputed interest expense on the interest free loan obtained from an affiliated party.

3. We decreased the cost of goods sold denominator used in the following calculations by the value of purchased swine: (1) The G&A expense ratio; (2) the interest expense ratio; and (3) the income offset for net income stabilization account ("NISA"). In addition, we increased the cost of goods sold denominator by the breeding stock amortization expense in the same three calculations. We also removed from the cost of goods sold denominator the salvage value of sows and boars sold from breeding stock.

#### Farm B

1. We revised the G&A expense ratio to reflect a gain on the disposal of sows.

2. We excluded the investment income claimed by Farm B as an offset to its reported interest expense.

3. Following the productive asset methodology for sows and boars, we allocated the general expenses and NISA income offset to market hogs only.

#### Farm D

1. The cost respondent submitted two cost of production calculations. The first calculation included each affiliate's cost of inputs supplied to Farm D. The second calculation reported the transfer price between Farm D and its affiliates for the inputs. For the preliminary determination, we applied section 773(f)(3) of the Act, the major input rule. In accordance with the major input rule, we adjusted the reported costs to the higher of the affiliated supplier's cost of production, the transfer price charged to Farm D or the market value of the input or service provided. See *COP/CV Adjustments Memorandum*.

2. The cost respondent allocated a portion of labor for an individual's management services between Farm D and the individual's own operations. For the preliminary determination, we revised the allocation methodology based on the ratio of expenses incurred by Farm D and the individual's own operations.

#### *Hytek:*

1. For purposes of reporting costs, Hytek collapsed all of its affiliated producers, suppliers and management companies. We have revised Hytek's reported costs by collapsing only the producing companies. For the remaining affiliates we applied the transactions disregarded rule or the major input rule, in accordance with

section 773(f)(2) and (3) of the Act, respectively.

2. We revised the reported costs to allocate feed based on weight and all other costs based on the number of head produced.

3. In accordance with the major input rule, section 773(f)(3) of the Act, we have examined the major inputs (*i.e.*, feed and contract barns) received by Hytek (*i.e.*, the collapsed entities as a whole) from its affiliated parties and have revised the cost of the feed and contract barns to reflect the higher of the transfer price, COP, or market price (where available).

4. We increased Hytek's reported total G&A expenses by including certain non-operating expenses.

5. We revised Hytek's allocation of its reported further manufacturing labor costs. Hytek allocated labor costs solely based on the average number of growing weeks (*e.g.*, the number of weeks it takes an isowean to grow to market weight). We revised Hytek's allocation by first determining the total growing weeks for the total head produced for each type of swine (*i.e.*, average number of weeks multiplied by the total number of head produced). We then determined the relative labor costs for each type of swine based on the proportion of total growing weeks for each type of swine to the total number of growing weeks for all swine produced. For further discussion of the adjustments above see each respondent's *COP/CV Adjustments Memorandum*.

#### 3. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of live swine, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for any applicable freight revenue, interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, movement charges, billing adjustments, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

With respect to testing home market sales prices, Ontario Pork maintains that live swine are highly perishable agricultural products and, thus, the Department should perform the substantial quantities test in accordance

with section 773(b)(2)(C)(ii) of the Act (*i.e.*, compare the weighted average home market sales prices to weighted average COPs). In support of its position, Ontario Pork explains that market hogs have a very short "shelf life," because they must be delivered within a 5 to 10 day window and if they are not sold within this window period, they lose significant value. In addition, Ontario Pork argues that live swine producers are price takers who cannot slow production or store inventory.

The petitioners claim that live swine are not highly perishable products and accordingly, the Department should not apply the weighted-average price-to-cost test in this case. The petitioners note that Ontario Pork has provided no evidence that its prices were actually affected by having to make deliveries outside the optimum window period. In addition, the petitioners note that Ontario Pork has provided no information as to how rapidly and significantly prices decline when sales are made outside the optimum window period.

For the preliminary determination, we have denied Ontario Pork's request to perform the substantial quantities test in accordance with section 773(b)(2)(C)(ii) of the Act. While the scenario discussed by Ontario Pork might support the alternative application of the substantial quantities test, there is not enough factual information on the record to support treating live swine as a highly perishable agricultural product. For example, more information is needed concerning the precise optimum sales window period, how quickly and significantly the swine loses value when sales are made outside this window period, and the extent to which home market prices were driven by this window period concern versus other factors. We will solicit more information from parties after the preliminary determination and will continue to analyze the issue for the final determination.

#### 4. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product in the home market are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section

773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

We found that, for certain live swine producers, more than 20 percent of the home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### *B. Calculation of Normal Value Based on Home Market Prices*

We determined price-based NVs for Ontario Pork and Hytek as follows. For these respondents, we deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP and CEP transactions, we made adjustments for differences in circumstances of sale ("COS") pursuant to section 773(a)(6)(C)(iii) of the Act.

The company-specific COS adjustments are described below.

##### 1. Ontario Pork

We made COS adjustments for Ontario Pork's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses, advertising expenses, and grading fees) and adding U.S. direct selling expenses (credit expenses). We also made adjustments by adding or subtracting billing adjustments reported as "window pricing adjustments" which Ontario Pork makes pursuant to cash flow clauses in certain supply agreements. For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Ontario Pork reported sales of organic slaughter hogs, which it made exclusively in the home market during the POI. To determine if these sales were made in the ordinary course of trade, within the meaning of section 771(15) of the Act, we compared organic sales to Ontario Pork's sales non-organic merchandise. Specifically, we compared the volume of sales, prices, types of customers, and customers' and end-users' expectations. We found that Ontario Pork's organic hog sales (1) constituted a negligible volume in comparison to non-organic hogs sold in

the home market; (2) were priced significantly higher than non-organic hogs; (3) were sold to a single Canadian customer who specializes in processing and distributing organic products; and (4) were eventually sold to organic food retailers whose customers/end-users perceive the organic swine products to provide health benefits from the organic raising, feeding and production of the end-product. For these reasons, we preliminarily determine that Ontario Pork's sales of organic hogs were made outside the ordinary course of trade. Therefore, we have disregarded these sales for purposes of calculating normal value.

##### 2. Hytek

For comparison to Hytek's EP sales, we made COS adjustments to Hytek's home market prices by deducting direct selling expenses incurred for home market sales (credit expenses, Provincial Pork Council fees, and Canadian Food Inspection Agency fees) and adding U.S. direct selling expenses (credit expenses and bank charges). For comparisons made to CEP sales, we deducted home market direct selling expenses, but did not add U.S. direct selling expenses. When comparing U.S. sales to home market sales of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

#### *C. Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for live swine for which we could not determine the NV based on comparison-market sales because there were no sales of a comparable product or because all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses ("SG&A"), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication for Ontario Pork and Hytek based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act, where possible.

For Premium Pork, we followed the methodology described in the "Cost Respondent Adjustments: Common to All Swine Producers for All Respondents" section, above. Additionally, we made the following adjustments to Premium Pork's reported costs:

1. For reporting purposes, Premium Pork collapsed all of its affiliated producers, suppliers and management companies. We have revised Premium Pork's reported costs by collapsing only the producing companies. For the remaining affiliates, we applied the transactions disregarded rule or the major input rule, in accordance with sections 773(f)(2) and (3) of the Act, respectively.

2. We revised the reported costs to reflect the higher of transfer or market price for purchases of semen inputs and leased facilities from affiliated companies in accordance with section 773(f)(2) of the Act. In the absence of a market price, we compared the transfer price to the affiliate's cost of production.

3. We weight-averaged the gross unit prices for Premium Pork's sales of culled sows and boars to calculate the salvage value for culled sows and boars.

4. We revised the reported costs to allocate feed based on weight and all other costs based on the number of head produced.

5. We revised the G&A expense ratio to exclude the costs of the affiliated management companies. Instead, we included the fees paid by the collapsed production companies to the affiliated management companies.

6. We revised the financial expense ratio to exclude the expenses incurred by the affiliated management companies. Instead, we included the expenses paid by the collapsed production companies to the affiliated management companies and shareholders.

7. We revised the reported further manufacturing G&A expense ratio to exclude costs of the affiliated management companies. Instead, we included the fees paid by the production companies to the affiliated management companies.

8. We revised the further manufacturing financial expense ratio to exclude the expenses incurred by the affiliated management companies. Instead, we included the expenses paid by the production companies to the affiliated management companies.

9. Because we preliminarily determine that a "particular market situation" exists with respect to Premium Pork's home market, the Department cannot determine the company's profit under section

773(e)(2)(A) or (B)(i) of the Act. Therefore, we calculated profit based on the weighted average actual profit incurred and realized by Ontario Pork and Hytek, the other two producers and exporters of the subject merchandise in this investigation, in accordance with section 773(e)(2)(B)(ii) of the Act. We used the weighted average, instead of a simple average, because a simple average would reveal proprietary information.

10. We based Premium Pork's CV selling expenses on the weighted average selling expenses incurred and realized by Ontario Pork and Hytek.

For Ontario Pork and Hytek, we made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and section 351.410 of the Departments regulations.

Company-specific adjustments are described below.

#### (1) Ontario Pork

For EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses, advertising expenses, and grading fees) and added U.S. direct selling expenses (credit expenses) to the NV.

#### (2) Hytek

For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses, Provincial Pork Council fees, and Canadian Food Inspection Agency fees). For EP sales, we added U.S. direct selling expenses (credit expenses, and bank charges) to the NV.

#### (3) Premium Pork

Because we are disregarding Premium Pork's home market sales, we weight-averaged the home market direct selling expense ratios for Ontario Pork and Hytek to calculate a proxy for Premium Pork's COS adjustments. Using this proxy, we deducted direct selling expenses incurred for home market sales for CEP and EP comparisons. For EP sales, we added U.S. direct selling expenses (credit expenses) to the NV.

#### *D. Affiliated-Party Transactions and Arm's Length Test*

##### (1) Ontario Pork

Ontario Pork does not have any affiliates and, therefore, Ontario Pork did not report home market sales to affiliates. However, in some instances during the POI, Ontario Pork sold slaughter hogs in the home market to customers affiliated with producers of the merchandise sold by Ontario Pork.

Ontario Pork is a non-profit organization established by the Farm Products Marketing Act and the

Agricultural Products Marketing Act to market and sell all slaughter hogs produced in Ontario. Pursuant to these Acts, all sales of Ontario-produced slaughter hogs, including sales to producers' affiliates, are controlled by Ontario Pork in terms of invoicing, pricing, quantity, quality, payment terms, delivery and other essential terms of sale. Therefore, we preliminarily determine that all of Ontario Pork's home market sales of the foreign like product were sales to unaffiliated customers, and we have treated them accordingly.

##### (2) Hytek

Hytek did not report home market sales of the foreign like product to affiliates because all of its sales to affiliates that were subsequently resold in the same form were sales of breeding swine, which have been excluded from the scope of investigation, or were substantially transformed (*e.g.*, from a feeder hog to a full-weight market hog) by the affiliate before being resold. In the latter instances, Hytek has reported the affiliate's sale to the unaffiliated customer.

##### (3) Premium Pork

As stated above, we preliminarily determine that a "particular market situation" exists with respect to Premium Pork's home market and we have disregarded the company's home market sales. Therefore, we have not analyzed whether Premium Pork's home market prices were at arm's length.

#### *E. Level of Trade/CEP Offset*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sale in the comparison market or, when NV is based on CV, that of the sale from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences

between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In conducting our level-of-trade analysis for each respondent, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar. We found the following with respect to each respondent:

##### (1) Ontario Pork

Ontario Pork reported the same channel of distribution and one level of trade for sales in the home market and to the United States. For all of its home market and EP sales, the selling functions Ontario Pork performed for its different customer categories were virtually identical, differing only with respect to whether Ontario Pork arranged transportation or the producer transported the merchandise sold. Therefore, we preliminarily determine that Ontario Pork's EP and home market levels of trade are the same and that none of the additional adjustments described in section 773(a)(7)(B) of the Act are warranted for Ontario Pork.

(2) Hytek

Hytek reported one channel of distribution for the home market sales. Hytek sells to finishing barns, packers, and culled sow coordinators and sausage producers. To determine whether separate levels of trade exist in the home market, we examined the stages in the marketing process, customer categories, and selling functions along the chain of distribution between Hytek and its customers. Based on this examination, we preliminarily determine that Hytek sold merchandise at one level of trade in the home market during the POI because the selling functions incurred for each product type and to each customer category were identical.

In the U.S. market, Hytek reported two channels of distribution. The channels of distribution are: (1) EP and CEP sales to U.S. customers and (2) further manufactured CEP sales by Hytek's U.S. affiliate to U.S. customers. Hytek's first channel of trade includes feeder pigs sold directly, or through unaffiliated Canadian trading companies, to U.S. finishers, and market hogs sold directly to U.S. packers through unaffiliated Canadian trading companies or through companies affiliated with Hytek.

To determine whether separate levels of trade exist for sales to the United States, we examined the selling functions, the chains of distribution, and the customer categories reported for sales to the United States. With regard to the U.S. sales of further manufactured products, which were all CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit covered in section 772(d) of the Act.

We preliminarily determine that EP and CEP sales by Hytek were made at the same level of trade because they involve the same selling functions for each customer category and channel of distribution. In addition, we preliminarily determine that Hytek's home market and U.S. sales were made at the same level of trade because the selling activities were virtually identical in each market. Therefore, we preliminarily determine that none of the additional adjustments described in section 773(a)(7)(B) of the Act are warranted for Hytek.

(3) Premium Pork

We based Premium Pork's NV on CV because a particular market situation exists in its home market and Premium Pork did not have a viable third country market. When NV is based on CV, the NV LOT is that of the sales from which

we derive SG&A expenses and profit. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile, 63 FR 2664 (January 16, 1998). Because we based the selling expenses and profit for Premium Pork on the weighted-average selling expenses incurred and profit earned by the other respondents in this investigation, we are unable to determine the LOT of the sales from which we derived selling expenses and profit for CV. Hence, there is insufficient record information to determine whether there is a difference between any U.S. sale by Premium Pork and CV. Therefore, we did not make a LOT adjustment to NV or a CEP offset.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve.

Verification

As provided in section 782(i) of the Act, we will verify all information to be used in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("CBP") to suspend liquidation of all imports of subject merchandise from Canada, except imports of subject merchandise produced and exported by Hytek, Inc., which has a *de minimis* rate, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Ontario Pork Producers' Marketing Board .....	13.25
Hytek, Inc. ....	*0.38
Premium Pork Canada, Inc. ...	15.01
All Others .....	14.06

\*De minimis.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of live swine are materially injuring, or threaten material injury to, the U.S. swine industry.

Disclosure

We will disclose the calculations used in our analyses to parties in these proceedings in accordance with section 351.224(b) of the Department's regulations.

Public Comment

Case briefs for these investigations must be submitted to the Department no later than 50 days after the date of publication of this preliminary determination or one week after the issuance of the last verification report, whichever is later. Rebuttal briefs must be filed five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in these investigations, the hearing will tentatively be held two days after submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As discussed in the "Postponement of Final Determination" section, above, we

have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**. These determinations are published pursuant to sections 733(f) and 777(i) of the Act.

Dated: October 14, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E4-2731 Filed 10-19-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-816]

#### **Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel butt-weld pipe fittings from Taiwan. This review covers the period June 1, 2002, through May 31, 2003.

**EFFECTIVE DATE:** October 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-6905.

#### **Background**

On July 7, 2004, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. See *Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 69 FR 40859 (July 7, 2004). The final results of this administrative review are currently due no later than November 4, 2004.

#### **Extension of Time Limit for Final Results**

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete

the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: (1) This review involves certain complex constructed export price ("CEP") adjustments including, but not limited to CEP profit and CEP offset; and (2) this review involves a complex affiliation issue.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 45 days until no later than December 20, 2004.

Dated: October 14, 2004.

**Jeffrey A. May,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E4-2730 Filed 10-19-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-502]

#### **Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 8, 2004, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (69 FR 18539). This review covers Saha Thai Steel Pipe Company, Ltd. ("Saha Thai"), a manufacturer/exporter of the subject merchandise. The period of review (POR) is March 1, 2002, through February 28, 2003.

Based on our analysis of the comments received, the final results differ from the preliminary results of review. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** October 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos or Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230;

telephone: (202) 482-2243 and (202) 482-3148, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 8, 2004, the Department published its preliminary results in this administrative review. See *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 18539 (April 8, 2004). On April 27, 2004, we issued Saha Thai's sales verification report. See *Memorandum to the File, from Javier Barrientos, AD/CVD Financial Analyst, and Jaqueline Arrowsmith, Case Analyst, through Sally Gannon, Program Manager; Verification of Questionnaire Responses submitted by Saha Thai Steel Pipe Company, Ltd. ("Saha Thai")*, April 27, 2004. We invited parties to comment on the preliminary results. The petitioners, Allied Tube & Conduit Corporation and Wheatland Tube Co., and Saha Thai submitted timely case briefs on May 24, 2004. Timely rebuttal briefs from both parties were submitted on June 2, 2004. Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act"), the Department extended the final results of review to October 5, 2004. See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 69 FR 48454.

(August 10, 2004).

The Department has conducted this administrative review in accordance with section 751 of the Act, as amended.

##### **Scope of the Antidumping Order**

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 5, 2004 (“*Decision Memorandum*”), which is hereby adopted by this notice. A list of the issues which the parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this memorandum, which is on file in the Central Records Unit, Room B-099, of the main Commerce Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received and of the database calculations, we have changed our calculations for the final results of review. For the final results of review, billing adjustments have been added to U.S. price to reflect the decision the Department has reached for the final results. In addition, we made minor corrections to the margin program. These changes are discussed in the relevant sections of the *Decision Memorandum* (at Comment 2) and *Memorandum to the File from Javier Barrientos, AD/CVD Financial Analyst, through Mark E. Hoadley, Acting Program Manager: Analysis of Saha Thai Steel Pipe Co., Ltd. for the Final Results*, dated October 5, 2004.

**Final Results of Review**

We determine that the following weighted-average percentage margin exists for the period March 1, 2002, through February 28, 2003:

Manufacturer/exporter	Margin
Saha Thai Steel Pipe Company, Ltd. ....	0.17%

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn

from warehouse, for consumption, as provided in section 751(a)(1) of the Act: 1) the cash deposit rate for Saha Thai will be zero as its margin for the final result is *de minimis*; 2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation conducted by the Department, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous proceeding conducted by the Department, the cash deposit rate will continue to be the “all others” rate established in the LTFV investigation, which is 15.67 percent. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Duty Assessment**

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to CBP within fifteen days of publication of the final results of review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculate an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales of each importer by the respective total entered value of these sales. This importer-specific assessment rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

The Department clarified its “automatic assessment” regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by companies included in the final results of this review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the “all others” rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Notice of Policy*

*Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), in response to *Notice and Request for Comment on Policy Concerning Assessment of Antidumping Duties and Request for Comment*, 63 FR 55361 (Oct. 15, 1998).

**Notification of Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department’s presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (“APOs”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 5, 2004.

**James J. Jochum,**  
*Assistant Secretary for Import Administration.*

**Appendix -- Issues in Decision Memorandum**

*Comments and Responses*

1. Section 201 Duties
  2. Section 201 Duty Billing Adjustments
  3. Standard Customs Duty Exemptions
  4. Antidumping Duty Exemptions
  5. Yield Loss Constant for Duty Drawback
  6. Duty Exemptions on Imported Inputs in the Cost of Production
  7. Treatment of Non-Dumped Sales
  8. Minor Corrections at Verification
- [FR Doc. E4-2727 Filed 10-19-04; 8:45 am]

BILLING CODE 3510-DS-S

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Export Trade Certificate of Review**

**ACTION:** Notice of application.

**SUMMARY:** Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or E-mail at [oetca@ita.doc.gov](mailto:oetca@ita.doc.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be marked clearly and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application

number 04-00003." A summary of the application follows.

**Summary of the Application**

*Applicant:* Rocky Mountain Instrument Company, 106 Laser Drive, Lafayette, Colorado 80026.

*Contact:* Don Arseneault, Quality System Manager, Telephone: (303) 604-4846.

*Application No.:* 04-00003.

*Date Deemed Submitted:* October 5, 2004.

*Members (in addition to Applicant):* None.

The Rocky Mountain Instrument Company seeks an Export Trade Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below for the following Products and Export Markets:

*Products*

Rocky Mountain Instrument Company is a manufacturer of full spectrum, ultraviolet through far infrared, laser and imaging optical components, assemblies and electro-optical systems. Products to be covered by the proposed Certificate include optical components ranging from .19-20µm applications; prism components and assemblies; optical coating for Ultra Violet, Visible, Near Infra Red, and Infra Red applications; optical mount assemblies; Vanadate Laser Marking Systems; and related research and development services, custom design, or build to print services.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

With respect to the sale of Products in the Export Markets, the Rocky Mountain Instrument Company may, on its own behalf:

1. Set up exclusive dealings for distributors and or end customers.
2. Allocate specific territories for such distributors and or end customers.
3. Allocate specific pricing guidelines for such distributors and or end customers.

Dated: October 13, 2004.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*

[FR Doc. E4-2724 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-DR-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review**

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On October 8, 2004, the counsel for Magnola Metallurgy, Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the countervailing duty administrative review made by the United States Department of Commerce, International Trade Administration, respecting Pure and Alloy Magnesium from Canada. This determination was published in the **Federal Register**, (69 FR 55412) on September 14, 2004. The NAFTA Secretariat has assigned Case Number USA-CDA-2004-1904-01 to this request.

**FOR FURTHER INFORMATION CONTACT:**

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on August 4, 2000, requesting panel review

of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 8, 2004);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 22, 2004); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 12, 2004.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. E4-2720 Filed 10-19-04; 8:45 am]

BILLING CODE 3510-GT-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 092704B]

#### Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an authorization to take small numbers of California sea lions, Pacific harbor seals, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization

to CALTRANS to incidentally take, by harassment, small numbers of these species of pinnipeds and cetaceans during the next 12 months.

**DATES:** Comments and information must be received no later than November 19, 2004.

**ADDRESSES:** Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.092704B@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 092704B. E-mail comments sent to addresses other than the one provided here may be missed and not incorporated into the public record on this action. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the 2001 application, the 2004 renewal request, and/or the June 2004 Annual Report may be obtained by writing to this address or by telephoning the contact listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, NMFS, (301) 713-2289, ext 128, or Monica DeAngelis, NMFS, (562) 980-3232.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not

reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On September 1, 2004, NMFS received a request from CALTRANS requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB or the Bay), California. An IHA was issued to CALTRANS for this activity on November 9, 2003 and it expires on November 9, 2004. Background information on the issuance of this IHA was published in the **Federal Register** on November 14, 2003 (68 FR 64595). Minor modifications to the IHA were made on June 28, 2004 in response to a request by CALTRANS. These modifications were limited to clarifications of, and corrections on, the terminology and conditions in the IHA.

A detailed description of the SF-OBB project was provided in the November 14, 2003 (68 FR 64595) **Federal Register** notice and does not need to be repeated here.

#### Description of the Marine Mammals Potentially Affected by the Activity

General information on the marine mammal species found in California waters can be found in Caretta et al. (2004), which is available at the

following URL: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html). Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBB area are the California sea lion and Pacific harbor seal. From December through May gray whales may also be present in the SF-OBB area. Information on these 3 species was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice and does not need to be repeated here.

#### Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Based on airborne noise levels measured and on-site monitoring conducted during 2004 under the current IHA, noise levels from the East Span project are not resulting in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to below harassment levels by the time they reach that haul-out site, 5.7 kilometers (3.5 miles) from the project site.

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' June 2004 annual monitoring report, the East Span Project is resulting in only small numbers of pinnipeds being harassed (through June 2004, the biological observers indicated that no pinnipeds had been harassed as a result of East Span construction) and, therefore, is not expected to result in more than a negligible impact on marine mammal stocks and will not have a significant impact on their habitat. Short-term impacts to habitat may include minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation.

However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

#### Mitigation

The following mitigation measures are currently required under the IHA to reduce impacts to marine mammals to the lowest extent practicable. NMFS proposes to continue these mitigation measures under a new IHA, if issued.

#### Barrier Systems

An air bubble curtain system is required to be used only when driving the permanent open-water piles. While the bubble curtain is required specifically as a method to reduce impacts to endangered and threatened fish species in SFB, it may also provide some benefit for marine mammals. The NMFS' Biological Opinion and the California Department of Fish and Game's (CDFG) 2081 Incidental Take Permit also allow for the use of other equally effective methods, such as cofferdams, as an alternative to the air bubble curtain system to attenuate the effects of sound pressure waves on fish during driving of permanent in-Bay piles (NMFS 2001; CDFG, 2001). Piers E-16 through E-7 for both the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams, which will be de-watered before the start of pile driving. De-watered cofferdams are generally effective sound attenuation devices. For Piers E3 through E6 of the Skyway and Piers 1 and E2 of the Self-Anchored Suspension span, it is anticipated that cofferdams will not be used; therefore, a bubble curtain will surround the piles.

#### Sound Attenuation

As a result of the determinations made during the Pile Installation Demonstration Project (PIDP) restrike and the investigation at the Benicia-Martinez Bridge, NMFS determined in 2003 that CALTRANS must install an air bubble curtain for pile driving for the open-water piles without cofferdams located at the SF-OBB. This air bubble curtain system consists of concentric layers of perforated aeration pipes stacked vertically and spaced no more than five vertical meters apart in all tide conditions. The minimum number of layers must be in accordance with water depth at the subject pile: 0-<5 m = 2 layers (1263 cfm); 5-<10 m = 4 layers (2526 cfm), 10-<15 m = 7 layers (4420 cfm); 15-<20 m = 10 layers (6314 cfm); 20-<25 m = 13 layers (8208 cfm). The lowest layer of perforated aeration pipes must be designed to ensure contact at all

times and tidal conditions with the mudline without sinking into the bay mud. Pipes in any layer must be arranged in a geometric pattern, which will allow for the pile driving operation to be completely enclosed by bubbles for the full depth of the water column.

To provide a uniform bubble flux, each aeration pipe must have four adjacent rows of air holes along the pipe. Air holes must be 1.6-mm diameter and spaced approximately 20 mm apart. The bubble curtain system will provide a bubble flux of at least two cubic meters per minute, per linear meter of pipeline in each layer. Air holes must be placed in 4 adjacent rows.

The air bubble curtain system must be composed of the following: (1) An air compressor(s), (2) supply lines to deliver the air, (3) distribution manifolds or headers, (4) perforated aeration pipes, and (5) a frame. The frame facilitates transport and placement of the system, keeps the aeration pipes stable, and provides ballast to counteract the buoyancy of the aeration pipes in operation. Meters are required to monitor the operation of the bubble curtain system. Pressure meters will be installed and monitored at all inlets to aeration pipelines and at points of lowest pressure in each branch of the aeration pipeline. If the pressure or flow rate in any meter falls below 90 percent of its operating value, the contractor will cease pile driving operations until the problem is corrected and the system is tested to the satisfaction of the CALTRANS resident engineer.

#### Establishment of Safety/Buffer Zones

A safety zone is to be established and monitored to include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1  $\mu$ Pa RMS (impulse) for pinnipeds. Also, a 180-dB re 1  $\mu$ Pa RMS (impulse) safety zone for gray whales must be established for pile driving occurring during the gray whale migration season from December through May. Prior to commencement of any pile driving, a preliminary 500-m (1,640-ft) radius safety zone for pinnipeds (California sea lions and Pacific harbor seals) will be established around the pile driving site, as it was for the PIDP. Once pile driving begins, either new safety zones can be established for the 500 kJ and 1700 kJ hammers or the 500 m (1,640 ft) safety zone can be retained. If new safety zones are established based on SPL measurements, NMFS requires that each new safety zone be based on the most conservative measurement (i.e., the largest safety zone configuration). SPLs will be recorded at the 500-m (1,640-ft) contour. The safety zone radius for

pinnipeds will then be enlarged or reduced, depending on the actual recorded SPLs.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals or sea lions enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

#### *Soft Start*

It should be recognized that although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain and marine mammal observers monitoring a 190-dB safety zone for pinipeds and 180-dB safety zone for gray whales, mitigation may not be 100 percent effective at all

times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS will also "soft start" the hammer prior to operating at full capacity. CALTRANS typically implements a "soft start" with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction is expected underwater. Therefore, contractor will initiate hammering of both the 500-kJ and the 1,700-kJ hammers with this procedure in order to allow pinnipeds in the area to voluntarily move from the area and should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds that are missed during safety zone monitoring will not be injured.

#### *Compliance with Equipment Noise Standards*

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, and gray whales, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

#### **Monitoring**

Since the start of the large-diameter pile driving in the Bay nearly two years ago, CALTRANS has completed pile driving of 105 piles inside cofferdams and 39 piles in open water (with the use of a bubble curtain) for a total of 144 piles. Monitoring teams were on-site for all open water pile driving and during driving of "tops" (last section of the piles, which drives the pile deeper into the substrate) inside cofferdams where underwater SPLs reached 190 dB or greater. During 76 days of monitoring, both within and outside the marine mammal safety zone, a single startle behavior from a California sea lion was observed.

The following monitoring measures are currently required under the IHA to reduce impacts to marine mammals to the lowest extent practicable. Unless, as noted, the work has been completed, NMFS proposes to continue those monitoring measures under a new IHA (if issued).

#### *Visual Observations*

The area-wide baseline monitoring and the aerial photo survey to estimate the fraction of pinnipeds that might be missed by visual monitoring have been completed under the current IHA and do not need to be continued.

Safety zone monitoring will be conducted during driving of all open-water, permanent piles without cofferdams and with cofferdams when underwater SPLs reach 190 dB RMS or greater. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team will be required for the safety zones around each pile driving site, so that multiple teams will be required if pile driving is occurring at multiple locations at the same time. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Most likely observers will conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) is not practical. Pile driving will not begin until the safety zone is clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation). Monitoring will continue through the pile driving period and will end approximately 30 minutes after pile driving has been completed. Biological observations will be made using binoculars during daylight hours.

In addition to monitoring from boats, during open-water pile driving, monitoring at one control site (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e. Mowry Slough) will be designated and monitored for comparison. Monitoring will be conducted twice a week at the control site whenever open-water pile driving is being conducted. Data on all observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals will be recorded based

on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seal re-haul after a flush.

#### *Acoustical Observations*

Airborne noise level measurements have been completed and underwater environmental noise levels will continue to be measured as part of the East Span Project. The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for gray whales. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given open-water pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions either west, east, south or north of the pile driving site will be conducted at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa RMS (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to

determine the amplitude, time history and frequency content of the impulse.

#### **Reporting**

Under the current IHA, CALTRANS has submitted weekly marine mammal monitoring reports and in June, 2004, CALTRANS submitted its Marine Mammal and Acoustic Monitoring for the Eastbound Structure. This annual report is available by contacting NMFS (see **ADDRESSES**) or on the Web at <http://biomitigation.org>.

Under the proposed IHA, coordination with NMFS will occur on a weekly basis, or more often as necessary. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at <http://biomitigation.org>. These weekly reports will include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS proposes to provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft final report will be considered to be the final report.

#### **National Environmental Policy Act (NEPA)**

NMFS has prepared an Environmental Assessment (EA) and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

#### **Endangered Species Act (ESA)**

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. The finding contained in the Biological Opinion was

that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected. However, the proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. Moreover, as the effects of the activities on listed salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA for this activity does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

#### **Preliminary Determinations**

For the reasons discussed in this document and in previously identified supporting documents, NMFS has preliminarily determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

#### **Proposed Authorization**

NMFS proposes to issue an IHA to CALTRANS for the potential

harassment of small numbers of harbor seals, California sea lions and California gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions and possibly California gray whales and will have no more than a negligible impact on these marine mammal stocks.

#### Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends reviewers of this document read NMFS' November 14, 2003 **Federal Register** notice (68 FR 64595) on this action, especially responses to comments made previously, as NMFS does not intend to address these issues further without the submission of additional scientific information relevant to the comment.

Dated: October 15, 2004.

**Laurie K. Allen,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 04-23484 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 092704A]

##### **Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory**

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

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization (LOA) to take several species of marine mammals incidental to operation of a low frequency sound source by the North Pacific Acoustic Laboratory (NPAL) was issued on October 15, 2004, to the University of

California San Diego, Scripps Institution of Oceanography (Scripps).

**DATES:** This authorization is effective from October 15, 2004, through October 14, 2005.

**ADDRESSES:** The application and LOA are available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, NMFS, (301) 713-2289, ext 128.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to operation of a low frequency sound source by NPAL, were published on August 17, 2001 (66 FR 43442), and remain in effect until September 17, 2006.

Issuance of the LOA to Scripps is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. NMFS also finds that the applicant will

meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements and receipt of reports required by the LOA.

Dated: October 15, 2004.

**Laurie K. Allen,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 04-23485 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 092904A]

##### **Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA**

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

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization (LOA) to take 3 species of marine mammals incidental to missile launch operations from San Nicolas Island, CA (SNI) was issued on October 8, 2004, to the Naval Air Warfare Center Weapons Division (NAWC-WD), Point Mugu, CA.

**DATES:** This authorization is effective from October 8, 2004, through October 7, 2005.

**ADDRESSES:** The application and LOA are available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, NMFS, (301) 713-2289, ext 128.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture,

or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to target missile operations on San Nicolas Island, CA, were published on September 2, 2003 (68 FR 52132), and remain in effect until October 2, 2008.

Issuance of the LOA to the NAWC-WD is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements and receipt of reports required by the LOA.

Dated: October 8, 2004.

**Laurie K. Allen,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 04-23486 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Hydrographic Services Review Panel Meeting

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric

Administration, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters the Under Secretary refers to the Panel for review and advice.

**DATE AND TIME:** The meeting will be held Monday, November 15, 2004, from 8:30 a.m. to 2:30 p.m., and Tuesday, November 16, 2004, from 8:30 am to 4:30 pm.

**Location:** Nauticus—The National Maritime Center, One Waterside Drive, Norfolk, Virginia 23510; telephone: 757-664-1000, or NOAA's mid-Atlantic Navigation Manager at 757-627-7072; Web site: <http://www.nauticus.org>.

The times and agenda topics may be subject to change. Refer to the Web site listed below for the most up-to-date meeting agenda.

**FOR FURTHER INFORMATION CONTACT:** CAPT Roger Parsons, Designated Federal Officer, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland, 20910. Phone: 301-713-2770, Fax: 301-713-4019; e-mail: [Hydroservices.panel@noaa.gov](mailto:Hydroservices.panel@noaa.gov) or visit the NOAA HSRP Web site at <http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm>.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to public participation with a 30-minute period set aside for verbal comments or questions from the public on November 16, 2004, at approximately 3 pm. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 30 copies) should be submitted to the Designated Federal Official by November 8, 2004. Written comments received by the HSRP Designated Federal Official after November 8, 2004, will be distributed to the HSRP, but may not be reviewed prior to the meeting date. Approximately ten (10) seats will be available for the public, on a first-come, first-served basis.

**Matters to be Considered:** Topics planned for discussion include: (1) Hydrographic Services Operating Principles, (2) Finalized National Hydrographic Survey Priorities, (3) Quality Assurance Program for

Hydrographic Products, (4) Formation of Subcommittees, Workgroups and/or Task Groups and, (5) Public Statements.

Dated: October 14, 2004.

**Roger L. Parsons,**

*Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 04-23411 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-JE-P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia; Correction

October 14, 2004.

In the letter to the Commissioner, Bureau of Customs and Border Protection published in the **Federal Register** on October 4, 2004 (69 FR 59207), on page 59208, in Column 2, in the table listing twelve-month restraint limits, please change the limit for 314-O from 108,441,116 square meters to 108,607,105 square meters. A letter has been sent to the Commissioner, Bureau of Customs and Border Protection to make the same change.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E4-2725 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-DR-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

October 15, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** October 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the

bulletin boards of each Customs port, call (202) 344-2650, or refer to the Bureau of Customs and Border Protection website at <http://www.cbp.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://www.otexa.ita.doc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Authority** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 55038, published on September 22, 2003.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 15, 2004.

Commissioner,  
*Bureau of Customs and Border Protection,  
Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 16, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on October 21, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit <sup>1</sup>
219 .....	2,560,910 square meters.
226/313 .....	4,379,218 square meters.
317 .....	67,406,089 square meters.
326 .....	4,133,989 square meters.
334/634 .....	550,116 dozen.
335/635 .....	333,087 dozen.
336/636 .....	452,317 dozen.

Category	Adjusted limit <sup>1</sup>
338/339 .....	1,292,590 dozen of which not more than 821,801 dozen shall be in Categories 338-S/339-S <sup>2</sup> .
340/640 .....	800,257 dozen.
341/641 .....	700,749 dozen.
342/642 .....	586,796 dozen.
347/348 .....	975,054 dozen of which not more than 457,861 dozen shall be in Categories 347-T/348-T <sup>3</sup> .
351/651 .....	400,128 dozen.
352 .....	777,503 dozen.
363 .....	13,779,958 numbers.
369-O <sup>4</sup> .....	168,360 kilograms.
369-S <sup>5</sup> .....	184,534 kilograms.
638/639 .....	521,905 dozen.
647/648 .....	748,067 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2003.

<sup>2</sup> Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

<sup>3</sup> Category 347-T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

<sup>4</sup> Category 369-O: all HTS numbers except (Category 369-S); 6307.10.2005, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

<sup>5</sup> Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
D. Michael Hutchinson,  
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E4-2726 Filed 10-19-04; 8:45 am]

**BILLING CODE 3510-DR-S**

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Request for Public Comments on a Commercial Availability Request under the Caribbean Basin Trade Partnership Act (CBTPA)**

October 18, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for a determination that certain yarns, for use in chief-weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA

**SUMMARY:** On October 12, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Bernette Textile Co, LLC of New York, NY, alleging that certain colored open end spun yarns ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and acrylic staple fiber, for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that such apparel made from such yarn be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by November 4, 2004, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3821.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as

added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On October 12, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Bernette Textile Co, LLC of New York, NY, alleging that certain colored open end spun yarns ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and acrylic staple fiber, for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner requesting quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such yarns.

#### Yarn Specifications:

<b>HTS Subheadings:</b>	5206.11.00.00, 5206.12.00.00
<b>Description:</b>	Open end spun yarn of uncombed fibers
<b>Size:</b>	10 to 31 metric count
<b>Fiber Content:</b>	In chief weight of cotton reclaimed from fabric scraps blended with producer dyed acrylic stable produced under license from Oulast Technologies, Inc.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a

timely manner are substitutable for these yarns for purposes of the intended use. Comments must be received no later than November 4, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarns stating that it produces the yarns that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

#### James C. Leonard III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 04-23577 Filed 10-18-04; 12:40 pm]

**BILLING CODE 3510-DR-S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Friday, November 5, 2004.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202-418-5100.

#### Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 04-23568 Filed 10-18-04; 11:51 am]

**BILLING CODE 6351-01-M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** 11 a.m., Friday, November 12, 2004.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**

Jean A. Webb, 202-418-5100.

#### Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 04-23569 Filed 10-18-04; 11:51 am]

**BILLING CODE 6351-01-M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** 11 a.m., Friday, November 19, 2004.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**

Jean A. Webb, 202-418-5100.

#### Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 04-23570 Filed 10-18-04; 11:51 am]

**BILLING CODE 6351-01-M**

## COMMODITY FUTURES TRADING

### Sunshine Act Meeting

**TIME AND DATE:** 11 a.m., Friday, November 26, 2004.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**

Jean A. Webb, 202-418-5100.

#### Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 04-23571 Filed 10-18-04; 11:51 am]

**BILLING CODE 6351-01-M**

**DEPARTMENT OF DEFENSE****Department of the Navy****Notice of Availability of Government-Owned Invention; Available for Licensing****AGENCY:** Department of the Navy, DoD.**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Patent application 10/943,648: Integrated Radar Optical Surveillance and Sighting System, a protection system integrating subsystems which may be controlled by non-proprietary, open architecture software, which, in turn, may accommodate the commonly known "plug and play" capability. The system can incorporate a variety of lethal (or less-than-lethal) weapon payloads as well as a variety of sensors and detectors; thereby providing the user with an integrated system solution capable of providing an enhanced situational awareness capability.

**ADDRESSES:** Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div, Code 054, Bldg 1, 300 Highway 361, Crane, IN 47522-5001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Bailey, Naval Surface Warfare Center, Crane Div, Code 054, Bldg 1, 300 Highway 361, Crane, IN 47522-5001, telephone (812)

854-2378. To download an application for license, see:

[www.crane.navy.mil/newscommunity/techtrans\\_CranePatents.asp](http://www.crane.navy.mil/newscommunity/techtrans_CranePatents.asp).

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: October 8, 2004.

**J.H. Wagshul,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04-23409 Filed 10-19-04; 8:45 am]

**BILLING CODE 3810-FF-P****DEPARTMENT OF DEFENSE****Department of the Navy****Notice of Availability of Government-Owned Invention; Available for Licensing****AGENCY:** Department of the Navy, DOD.**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available

for licensing by the Department of the Navy. U.S. Provisional Patent Application No. 60/601,180: Scanned Wavelength Spectroscopic Detector (SWSD) for Identifying Biological Cells and Organisms, Navy Case No. 96,640.

**ADDRESSES:** Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375-5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375-5320, telephone (202) 767-3083. Due to temporary U.S. Postal Service delays, please fax (202) 404-7920, e-mail: [kuhl@utopia.nrl.navy.mil](mailto:kuhl@utopia.nrl.navy.mil) or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: October 14, 2004.

**J. H. Wagshul,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04-23430 Filed 10-19-04; 8:45 am]

**BILLING CODE 3810-FF-P****DEPARTMENT OF DEFENSE****Department of the Navy****Notice of Availability of Government-Owned Invention; Available for Licensing****AGENCY:** Department of the Navy, DOD.**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of the general availability of licenses under the following pending patent.

U.S. Patent Application Serial Number 10/959,764 entitled "Reduced-Oxygen Breathing Device" filed 7 October 2004. The Reduced Oxygen Breathing Device (ROBD2) is an apparatus that dilutes the oxygen present in air to concentrations below 21% by mixing the air with nitrogen. The purpose of this dilution is to simulate the reduced oxygen concentration available as one ascends in altitude.

The ROBD2 is unique and different from previous devices that reduce the concentration of oxygen in room air via dilution with nitrogen gas in that it uses sophisticated gas regulating devices known as mass flow controllers. The ROBD also employs a gas extraction device as an independent component of the system that can separate nitrogen gas from air for use in the device.

**DATES:** Applications for a license may be submitted at any time from the date of this notice.

**ADDRESSES:** Submit license applications to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910-7500.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910-7500, telephone (301) 319-7428, fax (301) 319-7432, or e-Mail: [schlagelc@nmrc.navy.mil](mailto:schlagelc@nmrc.navy.mil).

**SUPPLEMENTARY INFORMATION:** Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Dated: October 14, 2004.

**J.H. Wagshul,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04-23431 Filed 10-19-04; 8:45 am]

**BILLING CODE 3810-FF-P****DEPARTMENT OF ENERGY****Office of Science; Biological and Environmental Research Advisory Committee****AGENCY:** Department of Energy.**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, November 3, 2004, 9 a.m. to 5 p.m.; and Thursday, November 4, 2004, 9 a.m. to 12 p.m.

**ADDRESSES:** American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Thomassen (301-903-9817; [david.thomassen@science.doe.gov](mailto:david.thomassen@science.doe.gov)), or Ms. Shirley Derflinger (301-903-0044; [shirley.derflinger@science.doe.gov](mailto:shirley.derflinger@science.doe.gov)), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological

and Environmental Research, SC-70/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290. The most current information concerning this meeting can be found on the Web site: <http://www.science.doe.gov/ober/berac/announce.html>.

**SUPPLEMENTARY INFORMATION: Purpose of the Meeting:** To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

*Tentative Agenda*

Wednesday, November 3, and Thursday, November 4, 2004:

- Comments from Dr. Raymond Orbach, Director, Office of Science.
- Report of Subcommittee on Genomics: GTL Facility for the Production and Characterization of Proteins and Molecular Tags.
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research.
- Discussion of process that BERAC will use to regularly evaluate BER's interim progress towards achieving its long term performance goals.
- Update on the Artificial Retina.
- Final Report of the Committee of Visitors review of the Climate Change Research Division.
- Preliminary Report of the Committee of Visitors review of the Environmental Remediation Sciences Research Division.
- Discussion of BERAC report on future directions and beneficial uses of synthetic genome research.
- Presentation on ES Net.
- BER Distinguished Scientist Award Program.
- Science talk.
- New business.
- Public comment (10 minute rule).

**Public Participation:** The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of

business. Public comment will follow the 10-minute rule. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

**Minutes:** The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 15, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 04-23480 Filed 10-19-04; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, November 17, 2004 1 p.m.–8:30 p.m.

**ADDRESSES:** Cities of Gold Hotel, Pojoaque, NM.,

**FOR FURTHER INFORMATION CONTACT:** Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995-0393; fax (505) 989-1752 or e-mail: [mmanzanares@doeal.gov](mailto:mmanzanares@doeal.gov).

**SUPPLEMENTARY INFORMATION: Purpose of the Board:** The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

Wednesday, November 17, 2004

1 p.m.—Call to Order by Ted Taylor, Deputy Designated Federal Officer (DDFO); Establishment of a Quorum; Welcome and Introductions by Chair; Approval of

Agenda; Approval of Minutes of September 29, 2004

1:15 p.m.—Board Business

A. Recruitment/Membership Update

B. Report from Chair

C. Report from Department of Energy; Ted Taylor, DDFO

D. Report from Executive Director, Menice S. Manzanares

E. New Business

2 p.m.—Break

2:15 p.m.—Reports

A. Executive Committee—Tim DeLong

B. Waste Management Committee, Jim Brannon

C. Environmental Monitoring, Surveillance and Remediation Committee, Tim DeLong

D. Community Involvement Committee, Grace Perez

E. Ad Hoc Committee on Bylaws, Jim Brannon

Second Reading and Action on Bylaws Amendment 12

Second Reading and Action on Bylaws Amendment 13

F. Comments from Ex-Officio Members

3:30 p.m.—Presentation on TRU Waste Management Program at LANL

5 p.m.—Dinner Break

6 p.m.—Public Comment

6:15 p.m.—Consideration and Action on Board Recommendations or Resolutions

6:45 p.m.—Presentation on Implementation of NMED Order on Consent during FY 2005–2006.

7:30 p.m.—Break

7:45 p.m.—Continue Presentation on Implementation of NMED Order on Consent during FY 2005–2006

8:30 p.m.—Adjourn

This agenda is subject to change at least one day in advance of the meeting.

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

**Minutes:** Minutes of this meeting will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.-4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanaras at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.org>.

Issued at Washington, DC on October 15, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04-23482 Filed 10-19-04; 8:45 am]

BILLING CODE 6405-01-P

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

#### National Coal Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the National Coal Council (NCC). Federal Advisory Committee Act (Public Law 92-463, 86 Stats. 770) requires notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, November 10, 2004, at 9 a.m. to 12 Noon.

**ADDRESSES:** Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Robert Kane, Phone: (202) 586-4753, or Estelle W. Hebron, Phone: (202) 586-6837, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Committee:* The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to recognize the important contributions that the NCC has made to the Department and other Federal agencies over the last 20 years.

*Tentative Agenda:*

- Call to order by Mr. Tom Kraemer, Chairman.
- Remarks of Secretary of Energy, Spencer Abraham.

- Council Business: Communication Committee Report, David Surber, Chairman Finance Committee Report, Rich Eimer, Chairman Study Group Report, Michael Mudd, Chairman

- Presentation of guest speaker from the Department of the Interior, to be announced.

- Presentation of guest speaker from EPA, to be announced.

- Presentation of guest speaker from CEQ, to be announced.

- Other Business.

- Adjourn.

*Public Participation:* The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Robert Kane or Estelle W. Hebron at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

*Transcripts:* The transcript will be available for the public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 15, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04-23481 Filed 10-19-04; 8:45 am]

BILLING CODE 6450-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7829-2]

### Notice of Charter Renewal

The Charter for the Environmental Protection Agency's Gulf of Mexico Program Policy Review Board (GMPPRB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 § 9(c). The purpose of GMPPRB is to provide advice and recommendations to

the Administrator of EPA on issues associated with plans to improve and protect the water quality and living resources of the Gulf of Mexico.

It is determined that GMPPRB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Gloria Car, Designated Federal Officer, U.S. EPA, Gulf of Mexico Program Office (Mail Code: EPA/GMPO), Stennis Space Center, MS, 39529, Telephone (228) 688-2421, or [car.gloria@epa.gov](mailto:car.gloria@epa.gov).

Dated: July 9, 2004.

**Benjamin H. Grumbles,**

*Acting Assistant Administrator, Office of Water.*

[FR Doc. 04-23451 Filed 10-19-04; 8:45 am]

BILLING CODE 6560-50-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7828-9]

### Notice of Change of Requirement Due Dates for Previously Published Solicitation: Building State, Territorial, and Tribal Capacity To Address Children's Environmental Health: Environmental Triggers of Childhood Asthma

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of change of requirement due dates.

**SUMMARY:** Requirement due dates listed in the previously published solicitation: Solicitation: "Building State, Territorial, and Tribal Capacity to Address Children's Environmental Health: Environmental Triggers of Childhood Asthma" have been changed. The original solicitation, FRL-7818-5] was published in the **Federal Register** on Monday, September 27, 2004/69 FR 57695-57705. These changes are being made to allow eligible applicants sufficient time to learn of this funding opportunity, develop strong Letters of Intent, and, if found eligible by EPA based on the Letters of Intent, to submit a strong Full Proposal.

*The Major New Extended Requirement Due Dates Are:*

Deadline for Letter of Intent email submission: November 15, 2004;

Notification of Applicant of Successful Letter of Intent: November 22, 2004;

Invitation Issued to Pre-proposal Assistance Call for successful Letters of Intent: November 22, 2004;

Pre-proposal Assistance Call: November 30, 2004;

Summary of Qs & As from Pre-proposal Assistance Call posted on Web site: December 7, 2004;

Last date for Qs & As to be submitted: January 20, 2005;

Solicitation Closing Date and Full Proposal shipping date for applicants found to be eligible by EPA based on the Letters of Intent: February 1, 2005.

*Specific References for Changes in Requirement Due Dates:*

**Note:** Page references below relate to the publication of this solicitation in the **Federal Register**/ Vol. 69, No. 186/Monday, September 27, 2004/Notices.

(1) Page 57696: Part I (5) Deadline for the Letter of Intent should now read: November 15, 2004.

(2) Page 57696: Part I (6) Solicitation Closing Date and Full Proposal shipping date for applicants found to be eligible by EPA based on the Letters of Intent: should now read: February 1, 2005.

(3) Page 57696: Part I (8)(h) Application and Submission Information: should now read: A two part application process will be followed. Letters of Intent must be submitted by e-mail November 15, 2004. Applicants with successful Letters of Intent will be invited to participate in an optional Pre-proposal Assistance Call on to be held on November 30, 2004 and to submit a Full Proposal which must be shipped by February 1, 2005.

(4) Page 57698: Part II Section II. should read: It is expected that grants and cooperative agreements will begin around the summer of 2005 and be completed in the summer of 2006.

(5) Page 57699: Part II Section IV. 2. a. (1) (a) should now read: Stage 1 of this application process is a Letter of Intent (Up to two pages in length) which is due via e-mail to [fletcher.bettina@epa.gov](mailto:fletcher.bettina@epa.gov) on or before November 15, 2004.

(6) Page 57700: Part II Section IV. 2. a. (1) (d) (Section 4) (1) should now read: Indication if you would like to participate in the November 30, 2004 optional Pre-proposal Assistance Call if your Letter of Intent is accepted.

(7) Page 57700: Part II Section IV. 2. b. (1) should now read: An optional Pre-proposal Assistance Conference Call will be held on November 30, 2004, to answer any questions prospective eligible applicants may have. If you indicate in your Letter of Intent a desire to participate in the Pre-proposal Assistance Conference Call and your Letter of Intent is found to be eligible, you will be emailed instructions for participating in the conference call.

**Note:** Applicants should periodically check the Web page below for updated information to applicants (e.g. posting of some Qs&As

from Letters of Intent). A summary of the questions and answers from the November 30, 2004 optional Pre-proposal Assistance Call will be posted by December 7, 2004 at: <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm>.

(8) Page 57700: Part II Section IV. 2. b. (d) (iii) Question 5. should now read: All projects should be completed during the summer of 2006.

(9) Page 57701: Part II Section IV. 4. (a) Submission Dates and Times should now read:

(a) A required Stage 1 Letter of Intent is due via e-mail to [fletcher.bettina@epa.gov](mailto:fletcher.bettina@epa.gov) on or before November 15, 2004 as indicated on the e-mail transmission. If e-mail is unavailable, a fax submission may be used. The same due date applies and the date will be determined by the date registered on the receiving fax machine log and printed on the received documents by said machine. A confirming e-mail will be sent within two working days of receipt of e-mailed Letters of Intent. A confirming phone call will be made within two working days of receipt for faxed Letters of Intent. The applicant should follow up with a phone call to Bettina Fletcher at (202) 564-2646 if a confirmation is not received within the stated time frames. E-mail and fax transmissions received after November 15, 2004 will not be reviewed.

(b) Applicants submitting a Letter of Intent will be notified via e-mail on or before November 22, 2004 if they are deemed eligible to participate in the optional Pre-proposal Assistance Call and to submit a Full Proposal.

(c) Applicants with accepted Letters of Intent who expressed an interest in participating in the optional Pre-proposal Assistance Call will be advised in this e-mail on or before November 22, 2004 of the call-in number and the specific time for the call.

(d) All questions before and after the November 30, 2004 Pre-proposal Assistance Call, must be sent by e-mail to the following address: [fletcher.bettina@epa.gov](mailto:fletcher.bettina@epa.gov). The word "QUESTION" in Capital Letters and the name of the solicitation should appear in the Subject Line. Answers to allowable questions will be provided in a timely manner at: <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm>. EPA will not respond to technical questions by phone or fax.

(e) Optional Pre-proposal Assistance Call will be held on November 30, 2004.

(f) A summary of the questions and answers from the November 30, 2004 Pre-proposal Conference Call will be posted on the OCHP Web site <http://>

[yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm](http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm) on or before December 7, 2004.

(g) To ensure fair and open competition, EPA will respond to questions submitted by e-mail up to January 20, 2005. Questions and answers will be posted in a timely manner at: <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm>.

(h) Full Proposals from invited eligible applicants must be delivered to the private shipping company (e.g., Federal Express, UPS, DHL, or courier) for shipment or postmarked (see note in Section VIII) by the U.S. Post Office (not a private postage meter) postmark on or before February 1, 2005. Full Proposals shipped or mailed after this date will not be considered for funding under this solicitation. Date of shipment will be determined by the shipping company's shipping information or the U.S. Post Office (not a private postage meter) postmark on the shipping package depending upon the method of shipment.

(i) Applicants will receive an e-mail notification of receipt of the Full Proposal within one month of receipt by the Agency.

(j) The Selected Projects will be announced as their award negotiations are completed around early summer 2005. Those projects not selected for award in this funding cycle will also be notified at this time.

(k) Start Date for Projects: July 15, 2005 is the earliest start date that applicants should plan on and enter on their proposal forms and time lines. Grant recipients may begin incurring allowable costs on the start date identified in the EPA grant award agreement. Budget periods may run up to 12 months from the date of award.

(10) Page 57703 Part II Section VI. 1. Award Notices should now read: Organizations submitting Letters of Intent will be notified regarding their successful or unsuccessful Stage 1 application via e-mail on or before November 22, 2004.

Project Officers of organizations with Full Proposals that were selected for possible award (pending successful award negotiations) will be contacted around early summer of 2005 by the appropriate Regional Project Officer to work through the awards process.

(11) Page 57704 Part II Section VII. 2. should now read:

f. Questions and answers from the November 30, 2004 optional Pre-proposal Assistance Call will be summarized and posted within a week of the Assistance Call on the OCHP Web page at: <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm>

g. To ensure fair and open competition, EPA will respond to questions submitted by e-mail up to January 20, 2005.

(12) Page 57703 Part II Section VIII. 7. Attachment should now read: All state, tribal, territorial agencies/departments and state/territorial/tribal or regional (e.g. the asthma coalition of the greater metropolitan area of Smallville) asthma coalitions who intend to apply should complete this Letter of Intent information and return it to EPA via e-mail to [fletcher.bettina@epa.gov](mailto:fletcher.bettina@epa.gov) by November 15, 2004.

(13) Page 57703 Part II Section VIII. 7. Section 4 should now read: Indicate below whether your organization would like to participate in the November 30, 2004 optional Pre-proposal Assistance Call IF YOUR LETTER OF INTENT IS FOUND TO BE ELIGIBLE. Questions and answers from the November 30, 2004 Pre-proposal Assistance Call will be posted by December 7, 2004 at: <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm>.

Yes, I would like to participate in the November 30, 2004 Pre-proposal Assistance Call IF my Letter of Intent is found by EPA to be eligible.

No, I decline to participate in the November 30, 2004 Pre-proposal Assistance Call if my Letter of Intent is found by EPA to be acceptable.

**FOR FURTHER INFORMATION CONTACT:** Bettina B. Fletcher; Office of Children's Health Protection; 1200 Pennsylvania Ave, NW.; Mail Code 1107A; Room 2512 Ariel Rios North; Washington, DC 20004-2403; [fletcher.bettina@epa.gov](mailto:fletcher.bettina@epa.gov); Phone: (202) 564-2646; FAX (202) 564-2733; Web site: <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm>.

Dated: October 12, 2004.

**William H. Sanders III,**

*Acting Director, Office of Children's Health Protection.*

[FR Doc. 04-23452 Filed 10-19-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004-0307; FRL-7680-6]

### Chlorimuron ethyl; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide chlorimuron ethyl, and opens

a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide chlorimuron ethyl through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

**DATES:** Comments, identified by docket Identification number OPP-2004-0307, must be received on or before November 19, 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:** Diane Sherman, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0128; fax number: (703) 308-8041; e-mail address: [sherman.diane@epa.gov](mailto:sherman.diane@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2004-0307. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA

identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0307. 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](mailto:opp-docket@epa.gov), Attention: Docket ID number OPP-2004-0307. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number OPP-2004-0307.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP-2004-0307. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI

on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

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

## II. Background

### A. What Action is the Agency Taking?

EPA has reassessed the uses of chlorimuron ethyl, reassessed two existing tolerances or legal residue limits, and reached a tolerance reassessment decision for this low risk pesticide. The Agency is issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for Chlorimuron Ethyl, known as a TRED,

as well as the related risk assessment and technical support documents.

Chlorimuron ethyl is a sulfonylurea class herbicide that inhibits acetolactate synthase, which regulates plant growth. It is registered for use on soybeans and peanuts. Chlorimuron ethyl may be applied to soybean crops at the preplant, preemergence, postemergence, or postharvest stages and may be applied to peanut crops at the foliar stage. It may also be applied to non-crop land at the foliar stage. There are no residential uses for chlorimuron ethyl. Fifteen end-use products in water dispersible granular formulations have been identified, and one pending registration exists for a granular formulation. Based on the hazard profile and exposure assessment for chlorimuron ethyl, the Agency has determined that neither acute nor chronic aggregate dietary (including both food and drinking water) exposure is a concern. No acute dietary endpoint was identified for chlorimuron ethyl, and the chronic dietary risk estimates for the general U.S. and all population subgroups are less than 1% of the cPAD.

EPA developed the chlorimuron ethyl TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard

established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the chlorimuron ethyl tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like chlorimuron ethyl, which pose no risk concerns, have low use, affect few stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings. The Agency therefore, is issuing the low-risk Chlorimuron Ethyl TRED, risk assessments, and related documents simultaneously for public comment.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Chlorimuron ethyl, however, poses no risks that require mitigation. The Agency therefore, is issuing the Chlorimuron Ethyl TRED, its risk assessments, and

related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for chlorimuron ethyl. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented. These decisions may be supplemented by further risk mitigation measures when EPA concludes its cumulative assessment of the pesticides.

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

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: September 23, 2004.

**Debra Edwards,**

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04-23395 Filed 10-19-04; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2003-0291; FRL-7681-7]

**Tributyltin Methacrylate and Bis(tributyltin) Oxide; Product Cancellation Order; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** EPA issued a notice in the *Federal Register* of March 17, 2004 (OPP-2004-0012; FRL-7346-8), announcing the cancellation of registrations for all manufacturing-use tributyltin methacrylate products used to formulate antifouling paints and one end-use tributyltin methacrylate antifouling paint registration. The notice also announced EPA's approval of amendments to terminate the use of manufacturing-use product registrations containing bis(tributyltin) oxide for formulating antifouling paints. These actions comprise the cancellation or termination of all uses of tributyltin manufacturing-use products for the formulation of antifouling paints. This notice announces amendments to the March 17, 2004 cancellation order to correct the effective date of the amendments to registrations announced in that notice.

**FOR FURTHER INFORMATION CONTACT:** Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8019; e-mail address: [bloom.jill@epa.gov](mailto:bloom.jill@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice,

consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0291. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this *Federal Register* document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

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

**II. What Does this Correction Do?**

The original cancellation orders for manufacturing-use products containing tributyltin methacrylate and labeled for use in formulating antifouling paints, and for the one end-use antifouling paint product containing tributyltin methacrylate, and for approval of the amendments to terminate the use of certain manufacturing-use products containing bis(tributyltin) oxide for formulating antifouling paints were published in the *Federal Register* on March 17, 2004; OPP-2004-0012; (FRL-7346-8). Today's notice corrects statements in Units II. and IV. of that cancellation order (on pages 12657 and 12658) to amend the effective date of cancellation consistent with the registrants' requests for use termination. The effective date of the use

terminations cited in the March 17, 2004 notice was the date of publication of that notice (or March 17, 2004); the corrected effective date is April 15, 2004. The effective date of the registration cancellations where no use termination was requested remains as stated in the previous notice. The registrations affected by this correction and the effective date of the use terminations are listed in the table below.

Registrations subject to amendments to terminate the use of manufacturing-use products containing bis(tributyltin) oxide for formulating antifouling paints.

EPA Registration No.	Product Name	Effective Date of Use Terminations
5204-1	Biomet TBTO	April 15, 2004
8898-17	Eurotin TBTO	April 15, 2004

FR Doc. E4-557 published in the *Federal Register* of March 17, 2004, (69 FR 12655) (FRL-7346-8) is corrected as follows:

1. On page 12657, in the first column, the second sentence immediately following Table 2, which now reads: "The cancellations and amendments to terminate a use are effective upon the date of publication of this document," is corrected to read, "The cancellations are effective upon the date of publication of this document, and amendments to terminate a use are effective April 15, 2004."

2. On page 12658, in Unit IV.2. *Registrations amended to delete terminated uses (Table 2 in Unit II.)*, the first two sentences following the paragraph heading which now read: "The effective date of the cancellation effectuating the use terminations is the date of publication of this document. As of the date of publication of this document, Atofina and Crompton may not sell, distribute, or use the products listed in Table 2 bearing labels allowing the use which is the subject of the use termination request.," are corrected to read: "The effective date of the use terminations is April 15, 2004. As of April 15, 2004, Atofina and Crompton may not sell, distribute, or use any product listed in Table 2 which bears a label allowing the use of the product for formulating antifouling paints."

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: September 30, 2004.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04-23038 Filed 10-19-04; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2004-0115; FRL-7678-1]

**Termination of Pesticide Producing Establishments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the Agency's intention to terminate a number of pesticide producing establishment registrations for failure to file annual pesticide producing reports as required by section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and supporting regulations found at 40 CFR part 167; and which the Agency could not contact through the U.S. mailing address on file pursuant to FIFRA section 7.

**DATES:** The pesticide producing establishments listed in this document will have their establishment registration terminated December 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pesticide producing establishments should contact the EPA Regional Office having jurisdiction for the state where their parent company is located. A listing of the EPA Regional Offices is included under Unit III. of the **SUPPLEMENTARY INFORMATION.**

**SUPPLEMENTARY INFORMATION:**

**I. Does this Action Apply to Me?**

This action is directed to pesticide producing establishments, but may be of interest to environmental, human health, and agricultural advocates; the agrochemical industry; pesticide users;

and members of the public interested in pesticide use. This list 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. If you have any questions regarding the applicability of this action to you or a particular entity, consult the appropriate regional contact.

**II. Background**

Section 7 of FIFRA requires that all establishments that produce any pesticide or active ingredient used in producing a pesticide, or device subject to this Act be registered with the Agency, and that all such establishments submit annual production reports to the Agency. The EPA regulations at 40 CFR part 167 establish requirements concerning these annual reports and the information that must be in annual reports (40 CFR 167.85). The regulations state that establishment registrations will be subject to termination if an annual report is not submitted (40 CFR 167.20(f)).

Notwithstanding the requirements identified above, no annual production reports were received from the establishments identified in this document in 2000, 2001, 2002, and/or 2003. The mailings sent to the last reported address of the companies identified in this document were returned unopened to the Agency, with indications of "undeliverable" or "address unknown" as the reason for the return. Subsequent attempts to locate the identified companies and establishments were unsuccessful. Additionally, some of the companies and/or establishments are out of business. Therefore, the Agency is terminating, without further notice, the registrations of the identified establishments pursuant to 40 CFR 167.20(f) for failure to submit the annual reports in 2003.

Following termination of each pesticide producing establishment's

registration, sale or distribution in the United States of any pesticide product produced in an establishment subsequent to the termination of that establishment's registration will be considered unlawful and a violation of section 12 of FIFRA, subject to possible civil and/or criminal penalties. This document will not preclude the Agency from seeking other appropriate remedies necessary for compliance with FIFRA.

**III. List of EPA Regional Offices and Regional Contacts**

The following is a listing of the EPA Regional Offices and Regional Contacts:

U.S. EPA, Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Pesticides Programs (3WC32), 1650 Arch St., Philadelphia, PA 19103-2029, ATTN: Kyla Townsend-McIntyre, Telephone: 215-814-2045.

U.S. EPA, Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), AFC Pesticides Section (APTMD), 61 Forsyth St., SW., Atlanta, GA 30303-8960, ATTN: Jacquelyn Wilkerson, Telephone: 404-562-9011.

U.S. EPA, Region 7 (WWPD/PEST), (Iowa, Kansas, Missouri, Nebraska), 901 N. 5<sup>th</sup> St., Kansas City, KS 66101, ATTN: Lou Banks, Telephone: 913-551-7125.

U.S. EPA, Region 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam) Pesticides Office (CMD-5), 75 Hawthorne St., San Francisco, CA 94105, ATTN: Glenda Dugan, Telephone: 415-947-4204.

U.S. EPA, Region 10 (Alaska, Idaho, Oregon, Washington), Pesticides Unit (ECO-084), 1200 Sixth Ave., Seattle, WA 98101, ATTN: Teresa Pimental, Telephone: 206-553-2057.

**IV. Pesticide-Producing Establishments to be Terminated**

The following table lists those companies with specific pesticide-producing establishments to be terminated.

Domestic Company Name and Mailing Address	Domestic Pesticide Producing Establishment Number, Name and Site Address
<b>EPA REGION 3</b>	
Gran-Tenesco Resources, Inc., 2314 North American St., Philadelphia, PA 19133	046271-PA-001*
Marlo Industries, Inc., P.O. Box 878, Jessup, MD 20794	066034-MD-001; Marlo Industries, Inc., 7785 Waterloo Rd., Unit 106, Jessup, MD 20794.
Metachem Products, LLC, 745 Governor Lea Rd., New Castle, DE 19720	001759-DE-001*

Domestic Company Name and Mailing Address	Domestic Pesticide Producing Establishment Number, Name and Site Address
Pennsylvania Engineering Co., 1107– 21 N. Howard St., Philadelphia, PA 19123	000087-PA-001; Pennsylvania Engineering Co., 1119–21 N. Howard St., Philadelphia, PA 19123
Wye Oak Laboratories, Inc., P.O. Box 485, DuBois, PA 15801	065460-PA-001; Wye Oak Laboratories, Inc., 36 W. Long Ave., DuBois, PA 15801
<b>EPA REGION 4</b>	
Action Chemical & Equipment, Inc., 6454 Beach Blvd., Jacksonville, FL 32216	036028-FL-001*
American Repellents, Inc., P.O. Box 1024, Oxford, MS 38655	062446-MS-001; American Repellents, Inc., Hwy. 7 North, Oxford, MS 38655
Aquarius Patio, Pool, Spa Center, Inc. 421 Racetrack Road NW., Fort Walton Beach, FL 32547	067715-FL-001*
Ati Detergent LLC, 12315 Plant B62 <sup>nd</sup> St. North, Largo, FL 33773	074173-FL-001*
Bioshield Technologies, Inc., 4405 International Blvd., Suite B109, Norcross, GA 30093	071825-GA-001*
Cricket Pool Service, Inc., 3899 Ulmerton Rd., Suite F, Clearwater, FL 33762	074557-FL-001*
Danachem, Inc., 7 Twin Creeks Drive, Tallahassee, AL 36078	064470-AL-001*
Debbie's Pool Supplies & Services, 5900 SE Abshier Blvd., Belleview, FL 34420	068856-FL-001*
Diall Chemical Corporation, 6649 Amory Court #3, Winter Park, FL 32792	034822-FL-001*
Dyn-o-mite International, Inc., 728 Industry Rd., Longwood, FL 32750	058300-FL-001*
Earth Solutions, 205 Commercial Dr., St. Augustine, FL 32092	072718-FL-001*
FCP One Stop Pool Shop, 1309 Circle 54, Laughman, FL 33837	074260-FL-001*
Horizon Pharmaceuticals, Inc., 11800 28 <sup>th</sup> St. N, St. Petersburg, FL 33716	072666-FL-001*
John Girvan Company, 205 Commercial Dr., At. Augustine, FL 32092	051708-FL-001*
Major Brand, Inc., 3367 W. Hospital Ave., M, Chamblee, GA 30341	072798-GA-001*
Megagro Corporation, 3770 NW 52 <sup>nd</sup> St., Miami, FL 33142	072886-FL-001*
Natural Hot Tub, Co., 10295 Collins Ave. #917, Bay Harbour, FL 33154	073281-FL-001*
Osgood Design Pools & Spa, Inc., 4340 N Orange Blossom Trail, Orlando, FL 32804	067173-FL-001*
Pacific Chemical Group, Inc., 9292 NW 101 <sup>st</sup> St., Miami, FL 33178	074048-FL-001*
Pagagus Pool & Spa, Inc., 5042 Seminole Pratt-Whattney, Laxahatchee, FL 33470	070318-FL-002*
Saroje International, 5370-D Truman Dr., Decatur, GA 30035	074791-GA-001*
Sugarhill Group, d/b/a Backyards USA, 943 NW 16 <sup>th</sup> Place, Stuart, FL 34994	068765-FL-001*
Vicksburg Chemical Company, P.O. Box 821003, Vicksburg, MS 39182	067209-MS-001; Vicksburg Chemical Co., 4280 Rifle Range Rd., Vicksburg, MS 39180
W.B. Gerard & Sons, Inc., 425 Grimes Rd., Washington, NC 27889	059478-NC-001*
<b>EPA REGION 7</b>	
Aero Master, Inc., 325 W. Pacific Ave., Webster Groves, MO 63119	003181-MO-001*
York Pharmaceuticals, Inc., 1201 Douglas Ave., Kansas City, KS 66103	009300-KS-001*
<b>EPA REGION 9</b>	
Environatural International, 7625 Escuda, Glendale, AZ 86306	064721-AZ-001; Environatural International, 351 W Hatcher Rd., Phoenix, AZ 85021

Domestic Company Name and Mailing Address	Domestic Pesticide Producing Establishment Number, Name and Site Address
Cal Crop USA, LLC., P.O. Box 426, Bonsall, CA 92003	068826-CA-001; Cal Crop USA, LLC., 2245 Micro Place, Escondido, CA 92029
Heat Pro, 357 Cliffwood Park Street, Suite A, Brea, CA 92821	073692-CA-001*
Home Oil Co of Anaheim, 1422 W. Broadway, Anaheim, CA 92802	046024-CA-001*
Kiss Int'l, a Subsidiary of Aqua Care Systems Inc., 965 Park Center Dr., Vista, CA 92083	071081-CA-001; Kiss Int'l/Ditech Systems, 965 Park Center Dr., Vista, CA 92083
Makiki Electronics, P.O. Box 729, Hauula, HI 96717	035054-HI-001, Makiki Electronics, 54 -122 Kamameha Hwy., Hauula, HI 96717
Microplus Termite Service, 1406 Bush St., Santa Anna, CA 92701	74282-CA-001*
Safe-Guard Chemicals Co., 904 S. Nogales St., City of Industry, CA 91748	056138-CA-001*
Sierra Pool Chemical Corp., P.O. Box 292069, Sacramento, CA 95829	068288-CA-001, Sierra Pool Chemical Corp., 8526 Weyand Ave., Sacramento, CA 95829
Turlock Dairy Supply, Inc., 880 S. Kilroy Rd., Turlock, CA 95380	068424-CA-001*
<b>EPA REGION 10</b>	
Chlorine Industries, 1010 Tayoner Dr., Anchorage, AK 99501	073796-AK-001*
Dyotech Equipment Co., 15010-E SE Morning Way, Clackamas, OR 97015	073774-OR-001*
Oaksdale Farm N'Home, P.O. Box 371, Oakesdale, WA 99158	070782-WA-001; Oaksdale Farm N'Home, N 202 1 <sup>st</sup> St., Oakesdale, WA 99158
Springfield Scientific Inc., 2600 Main St., Springfield, OR 97477	069975-OR-001*
Union Whse & Supply Co., P.O. Box 64089, St. Paul, MN 55164	070004-ID-001; Union Whse & Supply Co., 1001 N 'A' St., Grangeville, ID 83530

\*The mailing address and the site address are the same

Authority: 7 U.S.C. 136

#### List of Subjects

Environmental protection, Pesticides, Reporting and recordkeeping requirements.

Dated: October 1, 2004.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 04-23394 Filed 10-19-04; 8:45 am]

BILLING CODE 6560-50-S

#### EXPORT-IMPORT BANK OF THE UNITED STATES

##### Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately \$35 million in U.S. equipment to a polypropylene production facility in Israel. The U.S. exports will enable the facility to produce approximately 200,000 metric tons of polypropylene per year. Initial production is expected to commence in

early 2007. Available information indicates that this new production will be consumed in Israel, Italy and Turkey. Interested parties may submit comments on this transaction by e-mail to [economic.impact@exim.gov](mailto:economic.impact@exim.gov) or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

**Helene S. Walsh,**

*Director, Policy Oversight and Review.*

[FR Doc. 04-23445 Filed 10-19-04; 8:45 am]

BILLING CODE 6690-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

##### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 13, 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 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 December 20, 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 Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0062.

*Title:* Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed Service and/or Response Station(s), or to Assign or Transfer Such Station(s).

*Form No.:* FCC Form 330.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 500.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 500 hours.

*Total Annual Cost:* \$750,000.

*Privacy Act Impact Assessment:* Not applicable.

*Needs and Uses:* FCC Form 330 is used to apply for authority to construct a new or make changes in an Instructional Television Fixed Service (ITFS) or response station and low power relay station, or for consent to license assignment or transfer of control. Data is used by FCC staff to determine if an applicant is qualified and meets basic statutory requirements.

The Commission is now revising FCC Form 330 to request additional information to complete the Universal Licensing System (ULS) data elements since ITFS has been implemented into ULS. Additional information such as the licensee's e-mail address, fax number, type of applicant, contact's e-mail address and fax number will be added to this collection. There will also be clarification of data elements, instructions and corrections of mailing addresses and Web sites.

There are no changes to the estimated average burden and number of respondents.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-23454 Filed 10-19-04; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission**

October 12, 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 November 19, 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.:* 3060-0686.

*Title:* Streamlining the International Section 214 Authorization Process and Tariff Requirements.

*Form No.:* FCC Form 214.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,650 respondents; 3,603 responses.

*Estimated Time Per Response:* 1-6,056 hours.

*Frequency of Response:* On occasion, quarterly and annual reporting requirements, third party disclosure requirement and recordkeeping requirement.

*Total Annual Burden:* 148,053 hours.

*Total Annual Cost:* \$16,162,000.

*Privacy Act Impact Assessment:* Not applicable.

*Needs and Uses:* On June 30, 2004, the Commission released a Notice of Proposed Rulemaking, IB Docket No. 04-226, FCC 04-133 in which we proposed mandatory electronic filing of the International Section 2134 authorizations, including a new "International Section 214 Authorization for Assignment or Transfer of Control" form. This is in response to high public demand for electronic forms. Although this proceeding is still in progress, we propose to make the Section 214 assignments and transfers form available to the public for electronic filing on a voluntary basis. Applicants would have the option, at this time, to complete a paper application or file the form with the Commission electronically in the International Bureau Filing System (IBFS).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-23455 Filed 10-19-04; 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**

October 12, 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 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 (PRA) comments should be submitted on or before December 20, 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 Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**  
*OMB Control Number:* 3060-XXXX.  
*Title:* Federal-State Joint Board on Universal Service Petitions for Designation as an Eligible Telecommunications Carriers (ETC).  
*Form No.:* Not applicable.  
*Type of Review:* New collection.  
*Respondents:* Business or other for-profit.  
*Number of Respondents:* 22.  
*Estimated Time per Response:* 8 hours.

*Frequency of Response:* Recordkeeping requirement; other and annual reporting requirements.

*Total Annual Burden:* 176 hours.  
*Total Annual Cost:* Not applicable.  
*Privacy Act Impact Assessment:* Not applicable.

*Needs and Uses:* In the Virginia Cellular Order (FCC 03-338), the Commission stated as part future Eligible Telecommunications Carriers (ETC) designation orders, each designated ETC will be required to submit records and documentation on an annual basis. In particular, ETCs will be required to report: (1) Progress towards meeting infrastructure build-out plans; (2) the number of consumer complaints per 1,000 handsets; and (3) information detailing the number of unfulfilled requests for service from potential customers for a twelve month period. This information collection is necessary to ensure that each ETC satisfies its obligation under section 214(e) of the Communications Act of 1934, as amended, to provide services supported by the universal service mechanism throughout the areas for which each ETC is designated.

Federal Communications Commission.  
**Marlene H. Dortch,**  
*Secretary.*  
 [FR Doc. 04-23456 Filed 10-19-04; 8:45 am]  
**BILLING CODE 6712-01-P**

**FEDERAL ELECTION COMMISSION**

**Sunshine Act Meeting**

**AGENCY:** Federal Election Commission.  
**OPEN MEETINGS OF:** Thursday, October 21, 2004, 10 a.m.; Thursday, October 28, 2004, 10 a.m.  
**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** These meetings will be open to the public.

The following item scheduled for the open meeting of Thursday, October 21, 2004, has been rescheduled for the open meeting of Thursday, October 28, 2004: Explanation and Justification for Political Committee Rulemaking.

**PERSON TO CONTACT FOR INFORMATION:** Robert W. Biersack, Acting Press Officer, Telephone: (202) 694-1220.

**Mary W. Dove,**  
*Secretary of the Commission.*  
 [FR Doc. 04-23611 Filed 10-18-04; 3:22 pm]  
**BILLING CODE 6715-01-M**

**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 e-mail 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.:* 011849-002.

*Title:* HSDG/Maersk Sealand Space Charter Agreement.

*Parties:* Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft K.G., and A.P. Moller-Maersk A/S .

*Filing Party:* Marc J. Fink, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reduces the number of TEUs which Maersk Sealand may charter from HSDG; eliminates restrictive language regarding Rio Haina from Article 5.4 and adds December 31, 2004 as the expiration date of the agreement.

By Order of the Federal Maritime Commission.

Dated: October 15, 2004.

**Bryant L. VanBrakle,**  
*Secretary.*  
 [FR Doc. 04-23471 Filed 10-19-04; 8:45 am]  
**BILLING CODE 6730-01-P**

**FEDERAL MARITIME COMMISSION**

**Ocean Transportation Intermediary License Reissuances**

Notice is hereby given that the following Ocean Transportation Intermediary license have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License no.	Name/address	Date reissued
003966F .....	Amerasa Rapid Transit USA Inc., 2490-M Arnold Industrial Way, Concord, CA 94520.	September 21, 2004.
009867N .....	ZHarro Schumacher dba Schumacher Cargo Lines, 15501 Texaco Avenue, Paramount, CA 90723.	September 23, 2004.

License no.	Name/address	Date reissued
004395F .....	Superior Link International Inc., 380 S. Lemon Avenue, Suite B1-G, Walnut, CA 91789.	September 27, 2004.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 04-23487 Filed 10-19-04; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License Revocations**

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License Number:* 004447F.

*Name:* Bestway Shipping, Inc.

*Address:* 269 E. Redondo Beach Blvd., Gardena, CA 90248.

*Date Revoked:* October 3, 2004.

*Reason:* Failed to maintain a valid bond.

*License Number:* 004263F.

*Name:* Distribution Transportation Sevices Company.

*Address:* 827 West Terra Lane, P.O. Box 526, O'Fallon, MO 63366.

*Date Revoked:* September 20, 2004.

*Reason:* Failed to maintain a valid bond.

*License Number:* 015742N.

*Name:* JB Han Company, Inc. dba Joinus Freight System.

*Address:* 550 E. Carson Plaza Drive, Suite 217, Carson, CA 90746.

*Date Revoked:* October 4, 2004.

*Reason:* Failed to maintain a valid bond.

*License Number:* 002388F.

*Name:* Ram's Cargo Brokers, Inc.

*Address:* 3900 NW 79th Avenue, Suite 534, Miami, FL 33166.

*Date Revoked:* October 1, 2004.

*Reason:* Failed to maintain a valid bond.

*License Number:* 016956F.

*Name:* Worldwide Group, Inc. dba World Trans Line.

*Address:* 14928 S. Figueroa Street, Gardena, CA 90248.

*Date Revoked:* October 1, 2004.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 04-23475 Filed 10-19-04; 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. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address
012964NF .....	Mon Dela Vega Singh dba Mon Cargo Services, International. 130 Doolittle Drive, Unit 21 & 22 San Leandro, CA 94577

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 04-23472 Filed 10-19-04; 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. 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:

Universal Container Trade, Inc., 13047 Artesia Blvd. #108-3, Cerritos, CA 90703. Officer: Kwanju Eah, Lee, President (Qualifying Individual).

Global Alliance Logistics (DFW) Inc., 8505 Freeport Parkway, Suite 378, Irving, TX 75063. Officers: Kang Fai Tong (Michael), Secretary

(Qualifying Individual), Kam L. Ng, President.

Torision Freight Inc., 190 Heckel Street, Belleville, NJ 07109.

Officers: Aric Sing Y. Yan, President (Qualifying Individual), Stanley Tak Y. Yan, Vice President.

Nanix Express, Inc., 1022 W. Irving Park Road, Bensenville, IL 60106.

Officer: Felix Charn Wah Wong, President (Qualifying Individual).

Freightcan LLC, 161-15 Rockaway Blvd., Suite 20B, Jamaica, NY

11434. Officers: Dinesh P. Attavar, Vice President (Qualifying

Individual), Chandru Gurnani, President.

ATX International SRL, Via Dante 144, Limito Di Pioltello, Italy

20090. Officers: USSI Gianroberto, President (Qualifying Individual),

Tini Carlo, Vice President.

AERO DOC Inc., 1790 NW 82nd

Avenue, Miami, FL 33126. Officers: German Walter Muller, President

(Qualifying Individual), Maria

Susana Alvarez Vitale, Vice President.

Non-Vessel- Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Pacific Package, 6807 Parliament

Street, Houston, TX 77083. Ayo George Oreyomi, Sole Proprietor.

Classic Logistics, Inc., JFK International Airport, Cargo

Building #80, Rm. 205, Jamaica, NY

11430. Officers: Angela M. Tabick, Vice President (Qualifying

Individual), Evan Perroncino, President.

EDU Support Services, LLC, 46 Country Ridge Drive, Shelton, CT

06484. Officer: James Carl Urso, Managing Member (Qualifying

Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

A & A Alpha Shipping Inc., 7014 Allison Street, Landover Hills, MD

20784. Officers: Adebisi M. Akinshade, President (Qualifying

Individual), Adetunji G. Akinshade, Vice President.

ASC Miami, Corp., 9949 NW 89th

Avenue, Bay #5, Medley, FL 33178. Officers: Maria Del Pilar Torres,

President (Qualifying Individual), Jose David Salazar, Vice President.

ProLog International Freight

Forwarders, LLC, ProLog International, 13307 La Jolla Lane, Houston, TX 77060. Officer: James L. Elkins, President.

Dated: October 15, 2004.

**Bryant L. VanBrakle,**  
Secretary.

[FR Doc. 04-23474 Filed 10-19-04; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Correction

In the **Federal Register** Notice published October 6, 2004 (69 FR 59928) the reference to Waterline Pakistan (PVT) Ltd. is corrected to read: "Waterlink Pakistan (PVT) Ltd."

Dated: October 15, 2004.

**Bryant L. VanBrakle,**  
Secretary.

[FR Doc. 04-23473 Filed 10-19-04; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

October 12, 2004.

**TIME AND DATE:** 10 a.m., Tuesday, October 19, 2004.

**PLACE:** The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session:

*Secretary of Labor on behalf of Mark Gray v. North Star Mining, Inc.*, Docket No. KENT 2001-23-D. (Issues include whether the issue presented by the Secretary's petition for discretionary review was sufficiently raised before the administration law judge so as to be preserved for review; and whether an operator's threats to a miner were coercive and violated section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(2).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**FOR FURTHER INFORMATION CONTACT:** Jean Ellen, (202) 434-9950/(202) 708-9300

for TDD Relay/1-800-877-8339 for toll free.

**Jean H. Ellen,**  
Chief Docket Clerk.

[FR Doc. 04-23629 Filed 10-18-04; 3:46 pm]

BILLING CODE 6735-01-M

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2004.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *CommunitySouth Bancshares, Inc.*, Easley, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of CommunitySouth Bank & Trust, Easley, South Carolina.

2. *FNB Corporation*, Christiansburg, Virginia; to acquire 100 percent of the voting shares of Bedford Federal

Savings Bank, National Association, Bedford, Virginia, after the conversion of Bedford Federal Savings Bank FSB to a national bank.

**B. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *GB&T Bancshares, Inc.*, Gainesville, Georgia; to merge with FNBG Bancshares, Inc., Duluth, Georgia, and thereby indirectly acquire First National Bank of Gwinnett, Duluth, Georgia.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *FSB Bancshares, Inc.*, Henderson, Tennessee; to merge with Friendship Bancshares, Inc., Friendship, Tennessee, and thereby indirectly acquire Friendship Bank, Friendship, Tennessee.

**D. Federal Reserve Bank of Minneapolis** (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Vision Bank Holdings, Inc.*, Fargo, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of VisionBank, Fargo, North Dakota.

**E. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Young Corporation*, Chillicothe, Missouri; to become a bank holding company by retaining 20.34 percent of the voting shares of Citizens Bancshares Co., Chillicothe, Missouri, and Citizens Bank and Trust Company, Chillicothe, Missouri.

2. *Young Partners, L.P.*, Chillicothe, Missouri; to become a bank holding company by retaining 20.34 percent of the voting shares of Citizens Bancshares, Co., Chillicothe, Missouri, and Citizens Bank and Trust Company, Chillicothe, Missouri.

Board of Governors of the Federal Reserve System, October 14, 2004.

**Robert deV. Frierson,**

Deputy Secretary of the Board.

[FR Doc. 04-23422 Filed 10-19-04; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the

Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2004.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Boston Private Financial Holdings, Inc.*, Boston, Massachusetts; to acquire KLS Professional Advisors, LLC, New York, New York, and thereby engage in financial and investment advisory activities, pursuant to sections 225.28(b)(6) and (b)(6)(vi) of Regulation Y.

**B. Federal Reserve Bank of Cleveland** (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Wesbanco, Inc.*, Wheeling, West Virginia; to acquire Winton Financial Corporation, Cincinnati, Ohio, and thereby indirectly acquire The Winton Savings and Loan Company, Cincinnati, Ohio, and thereby engage in owning and operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Comments regarding this application must be received at the Reserve Bank or the office of the Board of Governors not later than November 15, 2004.

Board of Governors of the Federal Reserve System, October 14, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04-23421 Filed 10-19-04; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:30 a.m., Monday, October 25, 2004.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

#### FOR FURTHER INFORMATION CONTACT:

Michelle A. Smith, Director, Office of Board Members; 202-452-2955.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 15, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04-23544 Filed 10-15-04; 4:43 pm]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

### Notice of a Pilot Study to Aid Federal Trade Commission Staff in Conducting a Study of the Accuracy and Completeness of Consumer Reports, Pursuant to Section 319 of the Fair and Accurate Credit Transactions Act of 2003

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of pilot study and request for comment.

**SUMMARY:** Pursuant to section 319 of the Fair and Accurate Credit Transactions Act of 2003 ("the Act" or "FACT Act"), the Federal Trade Commission (the "Commission" or "FTC") is evaluating ways to study the accuracy and completeness of consumer reports. The purpose of the current pilot study is to evaluate the feasibility of a methodology

that involves direct review by consumers of the information reported in their consumer reports. Due to the small size of the study group, statistical conclusions will not be drawn from this pilot study. Comments will be considered before the FTC submits a request for Office of Management and Budget ("OMB") review under the Paperwork Reduction Act.

**DATES:** Public comments must be received on or before December 20, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to the "Accuracy Pilot Study: Paperwork Comment" to facilitate the organization of the comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex Y), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup> 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: [AccuracyPilotStudy@ftc.gov](mailto:AccuracyPilotStudy@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the

<sup>1</sup> 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).

Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Peter Vander Nat, Economist, (202) 326-3518, Federal Trade Commission, Bureau of Economics, 601 New Jersey Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159 (2003), among other purposes, amends the Fair Credit Reporting Act ("FCRA") to enhance the accuracy of consumer reports. The FACT Act requires the FTC to conduct a number of studies on consumer reporting and related issues.

Section 319 of the FACT Act requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. The Act requires the Commission to issue a series of biennial reports to Congress over a period of eleven years. The first report is due in December 2004.

As the first step in conducting the accuracy and completeness study, the FTC is conducting a pilot study which will evaluate the feasibility of a methodology that directly involves consumer review of the information contained in their credit reports. The pilot study does not rely on the selection of a nationally representative sample of consumers, and statistical conclusions will not be drawn from the pilot study. The FTC has designated a contractor with high-level expertise in credit reporting and related issues, subject to OMB clearance for the study under the Paperwork Reduction Act. The pilot study will involve a small group of consumers who give the contractor permission to review their credit reports. The contractor will help the consumers to understand their reports and to discern inaccuracies or incompleteness in them.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, which includes the duties provided by the FACT Act, and whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 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. The FTC will submit the proposed information collection requirements to OMB for review, as required by the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

#### **Description of the Collection of Information and Proposed Use:**

The design elements of the study are the following:

1. The study will consist of approximately 35 consumers having a diversity of credit scores covering at least three broad categories: poor, fair, and good.<sup>2</sup> The study group will consist of adult members of households to whom credit has been extended in the form of credit cards, automobile loans, home mortgages, or other forms of installment credit. The study group will be constructed by using list-assisted random digit telephone numbers with associated addresses. The FTC will send an official letter from the FTC regarding the nature and purpose of the pilot study to potential study participants. The study contractor then will screen consumers through telephone interviews. As various consumers give consent to participate (and thereby give the contractor permission to know their credit scores), if the respective categories of credit scores have an unequal distribution of consumers, then an array will be chosen to favor consumers with the relatively lower credit scores.

2. The contractor will help the participants obtain their credit reports from the three national repositories ("credit bureaus"): Equifax, Experian, and Trans Union.<sup>3</sup> Each study participant will request his or her three credit reports on the same day; although different participants will generally request their reports on different days.

3. The contractor will help the participants review their credit reports by (a) resolving common misunderstandings that they may have about the information in their reports

<sup>2</sup> A credit score is a numerical summary of the information in a credit report and is designed to be predictive of the risk of default. Credit scores are created by proprietary formulas that render the following general result: the higher the credit score, the lower the risk of default. The designated contractor for the pilot study plans to use the "FICO" credit score, which is a commonly used score in credit reporting that is developed by the Fair Isaac Corporation.

<sup>3</sup> Participants will use the Web site <http://www.myfico.com> to request credit reports. For participants who do not have Internet access, the contractor will provide it.

(this will involve educating the participant wherever appropriate), (b) helping to identify errors or potential errors, and (c) helping to locate any material differences or discrepancies among their three reports, and checking whether these differences indicate inaccuracies.

4. The contractor will facilitate a participant's contact with the credit bureaus and with the furnishers of information to help resolve items on the credit report the participant views as inaccurate. After the completion of the review, the contractor will determine whether the credit report information has changed, and whether any such change on the credit report led to a change in the participant's credit score.

5. To the extent necessary, the contractor will guide participants through the FCRA dispute process (by law, this process is limited to 30 days, but may be extended to 45 days if the consumer submits relevant information during the 30-day period). Specifically, participants who have issues that could not be resolved informally will use the dispute process provided by the FCRA. At the conclusion of this process, the contractor will ascertain whether the credit report information has changed, and whether any such change led to a change in the credit score.

The most important information to be obtained from the study is an assessment of the degree of difficulty with which each of the above tasks was performed by the participants, including the average amount of time needed for the respective tasks. The contractor also will provide an opinion on the feasibility of a national survey of credit reports using a methodology similar to that of the pilot study.

#### *Estimated Hours of Burden*

Consumer participation involves the initial screening and any subsequent time spent to understand, to review, and if deemed necessary, to dispute information in credit reports. The FTC staff estimates that up to 225 consumers may need to be screened through telephone interviews and that each screening interview may last up to 10 minutes, resulting in approximately 38 hours (225 contacts × (1/6) hour per contact).

With respect to the hours spent by study participants, in some cases, the relative simplicity of a credit report may render little need for review, and the consumer's participation may only be an hour. For reports that involve difficulties, it may require a number of hours for the participant to be educated about the report and to resolve any disputed items. For items that are

disputed formally, the participant must submit a dispute form, identify the nature of the problem, present verification from the participant's own records to the extent possible, and, upon furnisher response, perhaps submit follow-up information. All participants will have expert assistance available to them, and staff estimates that, on average, approximately 5 hours would be spent per participant, resulting in a total of 175 hours (5 hours  $\times$  35 participants).<sup>4</sup> Total burden hours are thus in a neighborhood of 200 hours (up to 38 hours for screening plus approximately 175 hours for study participants, then rounded to the nearest 50 hours).

#### *Estimated Cost Burden*

Participation by the consumer is voluntary. All participants will benefit by receiving assistance from the contractor in reviewing their credit reports, and identifying and resolving any errors. No monetary costs are involved for the consumer; specifically,

<sup>4</sup> From testimony before Congress by the Consumer Date Industry Association (see Statement of Stuart K. Pratt, CDIA, Before the Committee on Banking, Housing and Urban Affairs of the United States Senate, July 9, 2003), there were approximately 16 million consumer-requested credit reports across the three major credit bureaus for year 2003. Roughly 50% of these reports did not lead to any further response from the consumer (such as a call to, or dispute with, the credit bureaus). Regarding the remaining reports, about half of these (i.e., about 4 million reports) involved questions or clarifications; the other half (roughly another 4 million reports) involved some type of dispute. These data, although approximate, can be used to help create an estimate of the average time spent by participants in reviewing their credit reports.

The following estimates are for the purpose of calculating burden under the Paperwork Reduction Act. The estimates are conservative and likely overestimate the amount of time that will be spent by study participants. For reports that do not require the participants to pose any questions to a credit bureau about their report (estimated to be 50% of reports), staff estimates the participants' time spent to be an hour or less. For reports that involve questions to a credit bureau but not a formal dispute (estimated to be 25% of reports), staff estimates the participant's time spent to be 2 to 3 hours. For reports that involve a formal dispute (estimated here to be 25% of consumer-requested reports), there may be significant differences for time spent by the participants, and this variation is itself one element to be discerned by the pilot study. Staff believes that, as a preliminary estimate, a formal dispute would not involve more than 15 hours of the participant's time, particularly in light of the fact that the participants will have expert assistance available to them, including guidance through the FCRA dispute process. Overall, the staff has calculated the average time per participant by using the weighted average over the three categories of reports:  $(.50 \times 1 \text{ hour}) + (.25 \times 3 \text{ hours}) + (.25 \times 15 \text{ hours}) = 5 \text{ hours}$ .

participants will not pay for their credit reports.

**John D. Graubert,**

*Acting General Counsel.*

[FR Doc. 04-23453 Filed 10-19-04; 8:45 am]

**BILLING CODE 4750-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Committee on Vital and Health Statistics: Meeting**

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS).

*Time and Date:* November 4, 2004, 9 a.m.–3 p.m., November 5, 2004, 10 a.m.–3:15 p.m.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue, SW., Eisenberg Room—Room 800, Washington, DC 20201.

*Status:* Open.

*Purpose:* At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates and status reports from the Department on topics including Clinical Data Standards, the Consolidated Health Informatics Initiative, and the HIPAA Privacy Rule. There will also be updates on activities of the National Center for Health Statistics's (NCHS) Board of Scientific Counselors and on the National Health Information Infrastructure (NHII). In the afternoon the Committee will hear a presentation on the Census Bureau's American Community Survey and will discuss various materials prepared by NCVHS Subcommittees.

On the second day the Committee will be briefed on the National Institutes of Health's (NIH) Roadmap for the Future plan and the Clinical Trial Research Agenda. The Committee will also discuss plans for its annual report to Congress and there will be reports from the Subcommittees and a discussion of agendas for future Committee meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

*For Further Information Contact:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further

information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: October 12, 2004.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 04-23412 Filed 10-19-04; 8:45 am]

**BILLING CODE 4151-05-M**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Committee on Vital and Health Statistics: Meeting**

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure (NHII).

*Time and Date:* November 12, 2004, 9 a.m.–5 p.m.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

*Status:* Open.

*Purpose:* The Workgroup will hold the first in a series of hearings to gather information about personal health records, including key issues and current approaches. Subsequent hearings will be scheduled early in 2005.

*For Further Information Contact:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering Ph.D., Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, NCI Center for Strategic Dissemination and NCI Center for Bioinformatics, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 4087, Rockville, MD 20852, telephone (301) 594-8193, or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.gov/>, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: October 12, 2004.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 04-23413 Filed 10-19-04; 8:45 am]

**BILLING CODE 4151-04-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

*Time and Date:* 8:30 a.m. to 3 p.m., October 26, 2004.

*Place:* Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* The purpose of the meeting is to discuss and plan future population-based data activities of the Subcommittee on Populations.

*For Further Information Contact:* Additional information about this meeting as well as summaries of past meetings and a roster of committee members may be obtained from Audrey L. Burwell, Office of Minority Health, 1101 Wootton Parkway, 6th Floor, Room 600, Rockville, Maryland 20852, telephone: (301) 443-9923, e-mail [alburwell@osophs.dhhs.gov](mailto:alburwell@osophs.dhhs.gov); or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 2413, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/> where an agenda and more details about participation in the meeting or Subcommittee deliberations will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: October 6, 2004.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 04-23414 Filed 10-19-04; 8:45 am]

**BILLING CODE 4151-05-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary/Administration on Aging; Performance Review Board Members

Title 5, U.S.C. Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95-454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**.

The following persons will serve on the Performance Review Boards or Panels, which oversee the evaluation of

performance appraisals of Senior Executive Service members of the Department of Health and Human Services, Office of the Secretary/Administration on Aging: Evelyn White, Chair; David Cade; Robinsue Frohboese; George Strader; Edwin L. Walker; Ann Marie Lynch; John Jarman.

Dated: October 12, 2004.

**Evelyn White,**

*Principal Deputy Assistant Secretary for Administration and Management.*

[FR Doc. 04-23415 Filed 10-19-04; 8:45 am]

**BILLING CODE 5150-04-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30 Day-05-0448]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

The Minority HIV/AIDS Research Initiative: Access to HIV Care and Testing in the Rural South—New—The National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

#### Background

CDC is requesting from the Office of Management and Budget (OMB) a 2-year approval to administer a survey to local health departments and testing sites. As part of the Minority HIV/AIDS Research Initiative (MARI), CDC is funding a study that examines access to HIV care and testing in the rural South. The objectives of the study are twofold: (1) Determine the local availability of HIV counseling and testing, and identify HIV treatment venues (HIV doctor or clinic) in non-urban counties in the South, and (2) provide information to improve the availability of testing and treatment in the South.

Identifying barriers to accessing care in the South is relevant to selected goals and objectives in the CDC's "HIV Prevention Strategic Plan Through 2005." This plan identifies the goal to increase from the current estimated 70% to 95% the proportion of HIV-infected people in the United States who know they are infected through voluntary counseling and testing. CDC plans to meet this goal by: (1) Increasing the motivation of at-risk individuals to know their infection status and decrease real and perceived barriers to HIV testing; and (2) improve access to voluntary, client-centered counseling and testing (VCT) in high seroprevalence communities and populations at risk, focusing particularly on populations with high rates of undiagnosed infection. This study is relevant to the goals of CDC's Strategic Plan for 2005 and the Advancing HIV Prevention Initiative (AHP) to reduce barriers to HIV testing that impede those at risk from receiving HIV prevention services. Moreover, this study complements the AHP by providing the local service systems with a current visual depiction of HIV testing barriers in rural counties that will help address programming concerns to ultimately improve access to HIV testing and prevention services.

A sample from 325 counties will be selected from ten U.S. Southern states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia). Census Bureau Statistical Area data were used to identify 325 rural counties within the 10 Southern states that meet the definition of a non-metropolitan statistical area and/or cluster with a population of less than 50,000. There will be two phases to the survey of the rural counties. The first phase will be based on quantitative survey design, while the second will use qualitative face-to-face, one-on-one interviewing techniques.

During the initial phase, the following will be contacted and surveyed from each county: (a) Local Health Department; (b) two HIV testing & counseling venues; and (c) two HIV treatment sites. This will result in a total of 2,275 contacts over a 2-year period. To help reduce burden, respondents will be interviewed by survey over the telephone using a Computer Assisted Telephone Interview (CATI) technology. Telephone surveys will take approximately 30 minutes to complete, and will be limited to the absolute minimum number of questions required for the intended use of the data.

CDC has contracted this study to an Alliance Quality Education organization

to provide support costs for data collection and analysis. There is no cost to respondents except for their time.

The estimated annualized burden is 570 hours.

## ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden response (in hrs.)
(1) Health Department Workers .....	163	1	30/60
(2) HIV Counseling and Testing Site .....	488	1	30/60
(3) HIV Treatment Site Workers .....	488	1	30/60

Dated: October 12, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23434 Filed 10-19-04; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Program to Promote Diabetes Education Strategies in Minority Communities: The National Diabetes Education Program-Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for RFA 05014 "National Program to Promote Diabetes Education Strategies in Minority Communities: The National Diabetes Education Program" was published in the **Federal Register** on October 4, 2004, Volume 69, Number 191, pages 59231-59237. The notice is amended as follows: On page 59231, Column 1, under Key Dates, amend dates to reflect Letter of Intent Deadline: November 1, 2004 and Application Deadline: December 6, 2004, and in, Column 3, Section "I. Funding Opportunity Description," under the purpose, at the end of the last paragraph, add "This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>", and under Activities, at the beginning of the first paragraph add "The activities below should be implemented in multiple states to be consistent with the purpose and eligibility sections of this program announcement." On page 59233, Columns 1 and 2, Section "III.1. Eligible Applicants," replace this section with the following language "Applications may only be submitted by

national, regional, or multi-state institutions/organizations that are private health, education or social service organizations (professional or voluntary, have non-profit 501(c)(3) status; have affiliate offices or chapters at the national, regional or multi-state level in five or more geographically diverse communities serving a high concentration of the targeted population and have the capacity and experience to assist their affiliate offices and chapters. This also includes faith-based organizations that are 501(c)(3) entities and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations that are considered national, regional or multi-state. Geographically diverse communities must be located in different states. Applicants should consider available resources when determining the population size and the number of geographically diverse communities to include in their proposal. Affiliate and chapter offices may not apply in lieu of or on behalf of their parent national office, institution or organization. However, this does not exclude affiliates from assisting with the development of the application." On page 59237 Column 1, Section "VII. Agency Contacts," Change the contact information for the financial, grant management, or business assistance, contact: add "Tracy Sims, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488-2739, e-mail: [atu9@cdc.gov](mailto:atu9@cdc.gov) and remove "Tiffany Esslinger, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488-2686, e-mail: [tesslinger@cdc.gov](mailto:tesslinger@cdc.gov)."

Dated: October 14, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23435 Filed 10-19-04; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Guide to Community Preventive Services (GCPS) Task Force

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Task Force on Community Preventive Services.

*Times and Dates:* 8:30 a.m.-6 p.m., October 20, 2004. 8:30 a.m.-1 p.m., October 21, 2004.

*Place:* The Crowne Plaza Ravinia, 4355 Ashford Dunwoody Road, Atlanta, Georgia 30346-1521, telephone (770) 395-7700.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

*Matters To Be Discussed:* Agenda items include: briefings on administrative information, dissemination and partnerships, and reactions to previously completed reviews on home visiting for violence prevention; discussions of method issues including how better to communicate findings of insufficient evidence and ways to link systematic review findings to "How to" materials that will make it easier for users to implement effective interventions; and progress on reviews of evidence on school based nutrition, folic acid fortification and supplementation, prevention of HIV in men who have sex with men, worksite health promotion, and alcohol use prevention.

Agenda items are subject to change as priorities dictate.

*Contact Person or Additional Information:* Peter Briss, M.D., Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, M/S: E90, Atlanta, GA 30333, Phone 404-498-6292, email [pbriss@cdc.gov](mailto:pbriss@cdc.gov).

Persons interested in reserving a space for this meeting should call 404-498-6180 by close of business on October 18, 2004.

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: October 14, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23433 Filed 10-19-04; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH): Cancellation of Committee and Subcommittee Meeting**

This notice announces the cancellation of a previously announced meeting.

*Federal Notice Citation of Previous Announcement:* October 1, 2004 (Volume 69, Number 190) [Notices] [Page 58915] from the **Federal Register** Online via GPO Access.

*Previously Announced Times And Dates For Committee and Subcommittee Meeting:* 9:30 a.m.–8:30 p.m., October 19, 2004. 8 a.m.–4 p.m., October 20, 2004.

*Place:* The Westin St. Francis, 355 Powell Street, San Francisco, California 94102, telephone 415/397-7000, fax 415/774-0124.

*Change in the Meeting:* This meeting has been canceled.

*Contact Person for More Information:* Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533-6825, fax 513/533-6826.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 14, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23432 Filed 10-19-04; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Survey on Strategies To Address Barriers and Reduce Delays in Interjurisdictional Placements.

*OMB No.:* New collection.

*Description:* The Children's Bureau of the Administration for Children and Families (ACF) is proposing to collect information from 52 State/territory child welfare directors to assess strategies that child welfare agencies have developed to facilitate interjurisdictional placements for children in the child welfare system—primarily abused and neglected children—and to determine the supports and services needed to facilitate these placements. Respondents will be asked to assess the outcome of ACF grants intended to improve the performance of services related to interjurisdictional placements.

The Adoption and Safe Families Act (ASFA) (Pub. L. 105-89) includes new mandates on interjurisdictional resources and removing barriers to the placement of children across State lines. Collecting data from State child welfare agencies about effective strategies for facilitating interjurisdictional placements will help the Children's Bureau support efforts that complement those strategies. Data collected on the benefits and weaknesses of various strategies will help the Children's Bureau plan for future activities. Data will be collected through a web-based survey; respondents will have the option to complete the survey using a paper version.

*Respondents:* The 52 State/territory child welfare directors.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey on Strategies To Address Barriers and Reduce Delays in Interjurisdictional Placements .....	52	1	10	520

*Estimated Total Annual Burden Hours: 520*

*Additional Information:*

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: [grjohnson@hhs.gov](mailto:grjohnson@hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: [Katherine\\_T.Astrich@omb.eop.gov](mailto:Katherine_T.Astrich@omb.eop.gov).

Dated: October 13, 2004.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 04-23423 Filed 10-19-04; 8:45 am]

**BILLING CODE 4148-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2004N-0454]

**Dietary Supplements; Premarket Notification for New Dietary Ingredient Notifications; Public Meeting**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a meeting and is soliciting comments on FDA's premarket notification program for new dietary ingredients (NDIs). FDA is soliciting comments from industry, consumers, and other interested

members of the public concerning the content and format requirements for NDI notifications made under the Federal Food, Drug, and Cosmetic Act (the act). FDA is holding this meeting to give the public an opportunity to provide information and views on the topics outlined in this document. The agency intends to consider all comments received during the meeting and made to the docket in determining whether any future action is necessary or appropriate.

**DATES:** The public meeting will be held on November 15, 2004, from 9 a.m. to 5 p.m. Attendees must register to attend.

Submit written or electronic comments by December 3, 2004.

For security and space limitation reasons, you are encouraged to register early. You may preregister via phone, fax, or e-mail until close-of-business November 10, 2004, or on site on the day of the meeting, providing space is available. Those wishing to speak should contact Kelly Williams-Randolph (see **FOR FURTHER INFORMATION CONTACT**) before close-of-business, 3 business days before the meeting.

**ADDRESSES:** The meeting will be held at the Center for Food Safety and Applied Nutrition, Harvey W. Wiley Auditorium, 5100 Paint Branch Pkwy., College Park, MD 20740.

Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Kelly Williams-Randolph, Center for Food Safety and Applied Nutrition (HFS-810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2506, FAX: 301-436-2639, or e-mail: [Kelly.Williams@cfsan.fda.gov](mailto:Kelly.Williams@cfsan.fda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Dietary Supplement Health and Education Act of 1994 (DSHEA) (Public Law 103-417) amended the act by adding, among other things, provisions that defined the terms "dietary supplement" (section 201(ff) of the act (21 U.S.C. 321(ff))) and "new dietary ingredient" (section 413(c) of the act (21 U.S.C. 350b(c))). DSHEA also provided that a dietary supplement containing an NDI is adulterated unless it meets the requirements set forth in section 413 of the act, which requires premarket notification for certain NDIs.

Under section 413(a) of the act, a dietary supplement that contains an NDI

is deemed adulterated unless it meets one of two statutory requirements. One is that the dietary supplement contains only dietary ingredients that "have been present in the food supply as an article used for food in a form in which the food has not been chemically altered." (Section 413(a)(1) of the act). The alternative requirement is (section 413(a)(2) of the act) that there be:

[A] history of use or other evidence of safety establishing that the dietary ingredient when used under the conditions recommended or suggested in the labeling of the dietary supplement will reasonably be expected to be safe, and, at least 75 days before being introduced or delivered for introduction into interstate commerce, the manufacturer or distributor \* \* \* provides [FDA] with information, including any citation to published articles, which is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

FDA has issued a regulation § 190.6 (21 CFR 190.6) establishing the procedure by which a manufacturer or distributor of a dietary supplement that contains an NDI must submit the information required by section 413(a)(2) of the act.

##### **II. Why Is FDA Holding This Meeting?**

The agency is seeking public comment on several issues that need to be addressed to clarify the requirements of section 413(a)(2) of the act for NDIs that have not been present in the food supply as an article used for food in a form in which the food has not been chemically altered. FDA has identified a number of omissions and other problems in previous notifications that have been submitted by firms to comply with the NDI notification requirements of the act. These omissions include a failure to do the following: (1) Adequately describe the identity and composition of the NDI, (2) provide information that states the basis for a conclusion that the substance is an NDI, (3) provide adequate safety information about the NDI, or (4) provide other necessary information. The problems with NDI notifications described previously suggest that it may be helpful for FDA to consider ways to assist submitters of NDI notifications to ensure that they contain the information the agency needs to evaluate the notification. There is also recognition by the regulated industry that the quality of NDI notifications could benefit from FDA clarification of the statutory requirements (Ref. 1). Therefore, FDA is seeking comments from industry, consumers, and other interested members of the public concerning the

type, quantity, and quality of information that a notifier should provide in notifications under section 413(a)(2) of the act.

##### **III. Registration, Written Questions, and Requests for Oral Presentations**

Persons interested in attending the November 15, 2004, meeting may send their registration information (including name, title, business affiliation, address, telephone, and fax number) to the contact person (see **FOR FURTHER INFORMATION CONTACT**) by close-of-business November 10, 2004, or you may register onsite on the day of the meeting, providing space is available. To expedite processing, this registration information also may be sent to the contact person (see **FOR FURTHER INFORMATION CONTACT**) by fax or by e-mail. If, in addition to attending, you wish to make an oral presentation during the meeting, you must inform the contact person 3 days before the meeting when you register and submit the following: (1) A brief written statement of the general nature of the views you wish to present, (2) the names and addresses of all persons who will participate in the presentation, and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each presentation. Interested persons are encouraged to submit their presentations and any additional comments to the docket. Any person who wishes to distribute written material at the meeting is responsible for the copy and distribution of such material. If you need special accommodations due to disability, please notify the contact person at least 7 days in advance. There is no registration fee for this public meeting, but early registration is encouraged because space is limited and it will expedite entry into the building and parking area. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security systems.

##### **IV. Scope of the Meeting**

We are holding the public meeting on November 15, 2004, in part, to identify and receive comment on the information a firm should provide in an NDI notification under section 413(a)(2) of the act. As follows, we provide a list of questions intended to focus public comment on specific NDI issues.

### A. Status of a Substance as a "New Dietary Ingredient"

1. What should FDA consider to determine whether a substance falls within a particular category of the statutory definition of "dietary ingredients" under sections 201(ff)(1)(A) through (F) of the act?

2. What changes in chemical composition to a dietary ingredient would cause it to become a substance that is not a dietary ingredient?

3. What should FDA consider to determine whether a dietary ingredient was not marketed in the United States before October 15, 1994, and is therefore an NDI?

4. What changes in chemical composition to a dietary ingredient that was marketed in the United States before October 15, 1994, would lead to the dietary ingredient becoming an NDI subject to the notification requirement in section 413(a)(2) of the act?

5. What changes to the conditions of use (e.g., serving size, duration, frequency of use) recommended or suggested in the labeling for a dietary supplement that contains an NDI would trigger the need for a separate NDI notification?

6. Is there an authoritative list of dietary ingredients that were marketed prior to October 15, 1994, and therefore are not NDIs? If not, should there be? Who should compile such a list and what criteria should be considered for placement of the dietary ingredient on such a list?

### B. Chemical Identification of the NDI

1. What types of chemistry information should be included to describe an NDI for purposes of the NDI notification? Please consider the following types of information:

- Chemical name.
- Chemical Abstract Service (CAS) registry number (if available).
- Empirical formula.
- Structural formula.
- Quantitative composition.
- Chemical characterization.
- Chemical specifications.

2. Are there additional types of chemistry information that should be included in the description of an NDI?

3. What types of information should be included to describe a botanical NDI for purposes of the NDI notification? Please consider the following types of information:

- Botanical family name.
- Part(s) of plant used.
- Conditions of propagation.
  - Sexual reproduction (propagated from seeds).
  - Seeds produced through selective breeding—variety and cultivar.

- Seeds are bioengineered.
  - Variety, cultivar and seed producer.
  - Asexual reproduction by cloning.
  - Vegetative propagules.
  - tissue culture.
- Geographical location of cultivated or wild harvested plant.

- Conditions of cultivation.
  - Time of cultivation—month and year.
  - Field cultivation—soil pH, fertilizers, pesticides and herbicides.
  - Greenhouse cultivation.
    - Soil pH, fertilizers, pesticides and herbicides.
    - Hydroponic growth media—nutrients, growth hormones and minerals.
  - Method of drying—air or heat.
  - Processing information—hand or machine sorted, chopped or milled.

4. Is there other information that should be included in a botanical NDI notification due to unusual production conditions of the botanical? Please consider the following possible situations:

- Saccharomyces cerevisiae* is cultured in medium with unusually large amounts of selenium. Should the notification describe the degree of selenium uptake as well as the levels of selenium compounds in the final dietary supplement product?
- Traditional or bioengineering methods are used to produce a plant variety with novel properties. What chemistry information is needed to describe the plant variety in sufficient detail to identify the botanical product?

5. Is there processing information that should be included in the description of a botanical extract in order to adequately describe the NDI? Please consider the following types of information:

- Description of the method of preparation (e.g., extraction) in sufficient detail so as to make clear:
  - The identity of the source material (dietary ingredient).
  - How the extract (NDI) is obtained from that source material.
  - How the extract is standardized from batch to batch.
  - How potential adulterants such as nonfood solvents, pesticides, heavy metals and filth are excluded.

- Documentation of the absence of toxins or other by-products that may affect the safety of the ingredient produced by fermentation or bioengineering.
- Documentation that the extracts of cultured isolates are neither infectious nor toxic.

6. Are there additional types of information that should be included in the description of a botanical NDI?

### C. Information About the Dietary Supplement

1. What types of information about the dietary supplement product should be included in an NDI notification?

2. Please consider the following types of information:

a. Composition/formulation of the dietary supplement product, including any contaminants.

b. A copy of the proposed product label and of any other labeling that recommends or suggests conditions of use in addition to or different from those recommended or suggested in the product label.

### D. Establishing a Reasonable Expectation of Safety

1. What types of information should be included in an NDI notification in order to establish a reasonable expectation of safety based upon history of use? Please consider the following types of information:

a. A description of the population that consumed the food or dietary supplement containing the NDI.

b. The consumption levels (per serving and total exposure).

c. How often and how long the population consumed the food or dietary supplement containing the dietary ingredient.

d. The number of independent references documenting history of safe use.

e. The number of consecutive years of exposure.

f. Documentation of the health monitoring system(s) and database(s) associated with the consumption of the NDI during the historical period of safe use.

g. Reliability of historical safety information if no health monitoring system is in place to detect adverse effects that may be associated with the human consumption of the dietary ingredient.

2. Are there additional items that should be included to establish a reasonable expectation of safety based upon history of use?

3. What quality and quantity of data and information are needed to establish a reasonable expectation of safety based upon evidence other than history of use?

4. In considering the data and information necessary to establish reasonable expectation of safety, how would the following differences in the use of the NDI in the dietary supplement from historical use affect safety determinations?

a. Significantly higher serving level (e.g., twice the serving level historically used).

b. Longer duration of consumption than historically used (e.g., instead of recommending that a consumer drink an herbal tea for a few days or occasionally, the label of the dietary supplement containing the NDI label suggests or recommends continuous daily use for improved digestive function).

c. Different route of administration (e.g., the dietary ingredient was historically administered by poultice or injection, whereas the dietary supplement containing the dietary ingredient is ingested).

d. Change from historical use that might increase potential toxic effects (e.g., an NDI that will be consumed as ground root in capsules when the historical use was a tea made from the roots).

e. Change in consumer target group (e.g., from general population to young children, pregnant women, lactating women).

5. What criteria should FDA use to evaluate whether preclinical and clinical studies are of sufficient duration to establish a reasonable expectation of safety?

6. When notifications do not provide any information concerning recommendations for length of product usage, should FDA assume chronic use (i.e., daily) and evaluate safety on that basis?

7. What types of studies, if any, should be included in order to establish a reasonable expectation of safety when the proposed daily serving amount is comparable to or less than the safe historical daily serving amount? What if the proposed daily serving amount is greater than the safe historical daily serving amount? Please consider the following types of studies:

a. Genetic toxicity 2-3 study battery (e.g., a bacterial gene mutation assay, mammalian cell gene mutation assay, or deoxyribonucleic acid (DNA) repair assay).

b. Short-term feeding studies (<30-day) (rodent).

c. Subchronic feeding studies (90-day) (rodent, nonrodent).

d. Single dose human tolerance studies.

e. Repeat dose human safety studies (30- to 90-day duration).

f. Teratology studies (rodent, nonrodent).

g. Multigeneration reproduction studies (rodent, nonrodent).

h. Special studies (e.g., carcinogenicity, absorption, metabolism and distribution and excretion).

i. Other studies.

8. How would the evaluation of such studies (previously listed) to establish reasonable expectations of safety, differ

under varying duration and frequency of use scenarios such as the following:

a. The labeling of the dietary supplement containing an NDI recommends or suggests daily chronic use, and the documented historical duration and frequency of use support safe daily chronic use.

b. The labeling of the dietary supplement containing an NDI recommends or suggests intermittent use, and the documented historical duration and frequency of use support safe intermittent use.

c. The labeling of the dietary supplement containing an NDI recommends or suggests intermittent use, and the documented historical duration and frequency of use support safe daily chronic use.

d. The labeling of the dietary supplement containing an NDI recommends or suggests daily chronic use, and the documented safe historical duration and frequency of use support intermittent use.

e. There is no history of use data to establish safe intermittent or chronic daily use.

9. What are appropriate and authoritative references for notifiers to consider when developing protocols for collecting safety data in support of NDI notifications?

10. What considerations should apply to FDA's evaluation of the safety of a dietary supplement containing an NDI with respect to the following special populations?

a. Women of child bearing potential.

b. Pregnant women.

c. Lactating women.

d. Children.

e. Geriatric adults.

f. Other.

*E. The Role of Definitions in Evaluating NDIs*

1. Are there terms that should be defined so that the NDI notification program can be more transparent and consistent?

2. FDA seeks comment on how the following terms should be defined:

a. Amino acid.

b. Botanical.

c. Chemically altered.

d. Concentrate.

e. Constituent.

f. Extract.

g. Ingestion.

h. Metabolite.

i. Mineral.

j. Salts of dietary ingredients.

k. Tincture.

l. Vitamin.

*F. Is There a Need for Guidance or Amendment of Current Requirements?*

The information presented as follows, could assist FDA in efficiently

reviewing NDI notifications. Comment is invited on whether FDA should consider the issuance of draft guidance or amendments to current requirements to include the following:

1. Table of contents and "continuous pagination" in the notification;

2. A discussion that clearly indicates why the notifier has concluded that the "new dietary ingredient" is a dietary ingredient under 21 U.S.C. 321(ff)(1);

3. Detailed requirement for chemical characterization of the NDI;

4. Requirement for composition/formulation of the dietary supplement containing the NDI;

5. A tabular listing of studies, articles and other scientific information provided in the notification to support a conclusion that the NDI, when used under the conditions recommended or suggested in the labeling of the notifier's dietary supplement, will reasonably be expected to be safe, with an indication of whether the test material in these studies is the same substance as is used in the notifier's dietary supplement;

6. A safety document" that clearly describes the scientific reasoning used by the notifier to establish a reasonable expectation of safety, based upon the data provided in the notification; and

7. Option for electronic submission of notifications.

## VI. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Internet at <http://www.fda.gov>.

## VII. Reference

We have placed the following reference on display in the Division of Dockets Management (see **ADDRESSES**). You may see it at that office between 9 a.m. and 4 p.m., Monday through Friday.

1. McGuffin and A. L. Young, Premarket Notifications of New Dietary Ingredients—A Ten-Year Review, *Food and Drug Law Journal*, 59(1): 2004.

## VIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that

individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 13, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04-23439 Filed 10-15-04; 2:59 pm]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Workplace Helpline Call Record Form and Followup Survey (OMB No. 0930-0232)—Extension**

Workplace Helpline is a toll-free, telephone consulting service which provides information, guidance and assistance to employers, community-based prevention organizations and labor offices on how to deal with alcohol and drug abuse problems in the workplace. The Helpline was required by Presidential Executive Order 12564 and has been operating since 1987. It is located in the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP), where it is managed out of the Division of Workplace Programs.

Callers access the Helpline service through one of its Workplace Prevention Specialists (WPS) who may spend from several to up to 30 minutes with a caller, providing guidance on how to develop a comprehensive workplace prevention program (written policy, employee assistance program services, employee education, supervisor training, and drug testing) or components thereof.

When a call is received, the WPS uses a Call Record Form to record information about the call, including the name of the company or organization, the address, phone number, and the number of employees. Each caller is advised that their responses are completely voluntary, and that full and complete consultation will be provided by the WPS whether or not the caller agrees to answer any question. To determine if the caller is representing an employer or other organization that is seeking assistance in dealing with

substance abuse in the workplace, each caller is asked for his/her position in the company/organization and the basis for the call. In the course of the call, the WPS will try to identify the following information: basis or reason for the call (*i.e.*, crisis, compliance with State or Federal requirements, or just wants to implement a prevention program or initiative); nature of assistance requested; number of employees and whether the business has multiple locations; and the industry represented by the caller (*e.g.*, mining, construction, etc.). Finally, a note is made on the Call Record Form about what specific type(s) of technical assistance was given.

Callers to the Helpline may not, for a variety of reasons, contact the Helpline to describe any successes or failures they are having in implementing any prevention initiatives discussed with the Helpline staff. In addition, CSAP wants to know if the Helpline service is working as intended. Accordingly, the Helpline staff contacts a sample of callers to discuss the caller's progress in taking action based on the Helpline consultation, and whether or not they were satisfied with the Helpline service. Callers are told the reasons for the call and that their responses to questions are completely voluntary. If the caller is willing to participate, they are asked about the actions, if any, they took as a result of the consultation with the Helpline and if there were any obstacles to taking the desired action, such as resistance from employees and lack of time. The callers are also asked several questions to help determine if the consultation was useful and if the Helpline staff was helpful, and whether or not they would refer others to the Helpline. The annual average burden associated with the Helpline Call Record and Followup Survey are summarized below.

Form	Number of respondents	Responses/respondent	Burden/re-sponse (hrs.)	Total burden (hrs.)
Call Record Form .....	3,120	1	.250	780
Followup Survey .....	780	1	.167	130
Total .....	3,900	.....	.....	910

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by December 20, 2004.

Dated: October 13, 2004.

**Anna Marsh,**

*Executive Officer, SAMHSA.*

[FR Doc. 04-23436 Filed 10-19-04; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HOMELAND SECURITY**

**National Communications System**

**National Security Telecommunications Advisory Committee**

**AGENCY:** National Communications System (NCS)

**ACTION:** Supplemental notice of open meeting.

**SUMMARY:** As previously noticed, (see notice of meeting published October 19, 2004), the President's National Security Telecommunications Advisory Committee (NSTAC) will meet via conference call on Thursday, October 21, 2004, from 3 p.m. to 4 p.m. The conference call will be open to the public.

Due to an administrative oversight, publication of the original notice for the aforementioned meeting, which was expected to occur on October 6, 2004, was unexpectedly delayed. Accordingly, to afford interested members of the public an opportunity to arrange access to the conference bridge, this *Supplemental Notice* extends the registration period for the call. Interested members of the public who wish to monitor the teleconference should contact Ms. Daniela Christopherson at (703) 607-6217, or by e-mail at *Christod@ncs.gov*, not later than 1 p.m. on October 21, 2004, to obtain the access information and the meeting materials.

**FOR FURTHER INFORMATION CONTACT:** Call Ms. Kiesha Gebreyes, Chief, Industry operations Branch at (703) 607-6134, or write the Manager, National Communications System, P.O. Box 4502, Arlington, Virginia 22204-4502.

**Sheron Bellizan,**  
*Chief of Staff, National Communications System.*  
 [FR Doc. 04-23503 Filed 10-19-04; 8:45 am]  
**BILLING CODE 4410-10-M**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4903-N-81]

**Notice of Submission of Proposed Information Collection to OMB; HUD Urban Scholars Fellowship Program Grants Application**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information through applications for a competitive selection process for fellowships to conduct research on HUD-related topics.

**DATES:** *Comments Due Date:* November 19, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-0214) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne\_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian\_L\_Deitzer@HUD.gov* or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer

and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title Of Proposal:* HUD Urban Scholars Fellowship Program Grants Application.

*OMB Approval Number:* 2528-0214.  
*Form Numbers:* HUD-424, HUD-424B, SFLLL, HUD-27061, HUD 2880, HUD 2993 HUD, HUD-9010.

*Description Of The Need For The Information And Its Proposed Use:* This is a request for continued approval to collect information through applications for a competitive selection process for fellowships to conduct research on HUD-related topics.

*Frequency Of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	110	1-2		32-44		3,320

*Total Estimated Burden Hours:* 3,320.  
*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 13, 2004.\_

**Wayne Eddins,**  
*Departmental Reports Management Officer, Office of the Chief Information Officer.*  
 [FR Doc. E4-2717 Filed 10-19-04; 8:45 am]  
**BILLING CODE 4210-27-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4903-N-82]

**Notice of Submission of Proposed Information Collection to OMB; Housing Agency Calculation of Occupancy/Performance Funding Systems (PFS)**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue to collect information provided by HA's for the projected

occupancy percentage used as one element in calculating annual contributions for operating subsidies under the Performance Funding Systems (PFS).

**DATES:** *Comments Due Date:* November 19, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577-0066) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); or Lillian Deitzer at [Lillian\\_L\\_Deitzer@HUD.gov](mailto:Lillian_L_Deitzer@HUD.gov) or telephone (202) 708-2374. This is not a

toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Housing Agency Calculation of Occupancy/Performance Funding Systems (PFS).

*OMB Approval Number:* 2577-0066.

*Form Numbers:* HUD-52728.

*Description of the Need for the Information and its Proposed Use:* This is a request for approval to continue to collect information provided by HA's for the projected occupancy percentage used as one element in calculating annual contributions for operating subsidies under the Performance Funding Systems (PFS).

*Frequency of Submission:* Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	3,100	1		2		6,200

*Total Estimated Burden Hours:* 6,200.  
*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 13, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. E4-2718 Filed 10-19-04; 8:45 am]

**BILLING CODE 4210-27-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-490-N-83]

**Notice of Submission of Proposed Information Collection to OMB; Contract and Subcontract Activity Reporting on Minority Business Enterprise (MBE)**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is collected from developers, borrowers, sponsors, or project managers. Summaries from this report enable HUD to monitor and evaluate progress toward designated Minority Business Enterprise (MBE) goals of Executive Order 12432. The information is used for the Department's annual report. This submission consolidates information previously reported under 2577-0088 and 2502-0355.

**DATES:** *Comments Due Date:* November 19, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535-Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Wayne\\_Eddins@HUD.gov](mailto:Wayne_Eddins@HUD.gov); or Lillian Deitzer at [Lillian\\_L\\_Deitzer@HUD.gov](mailto:Lillian_L_Deitzer@HUD.gov) or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer

and at HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Contract and Subcontract Activity Reporting on Minority Business Enterprise (MBE).

OMB Approval Number: 2535-Pending.  
 Form Numbers: HUD-2516.  
 Description Of The Need For The Information And Its Proposed Use: The information is collected from

developers, borrowers, sponsors, or project managers. Summaries from this report enable HUD to monitor and evaluate progress toward designated Minority Business Enterprise (MBE) goals of Executive Order 12432. The

information is used for the Department's annual report. This submission consolidates information previously reported under 2577-0088 and 2502-0355.

Frequency Of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	5365	1		1		5365

Total Estimated Burden Hours: 5,365.  
 Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 14, 2004.

Wayne Eddins,

Departmental Reports Management Officer,  
 Office of the Chief Information Officer.

[FR Doc. E4-2719 Filed 10-19-04; 8:45 am]

BILLING CODE 4210-27-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4925-N-01]

**Funding for Fiscal Year 2004: Capacity Building for Community Development and Affordable Housing**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

**Overview Information**

A. Federal Agency Name. Department of Housing and Urban Development, Office of the Assistant Secretary for Community Planning and Development.

B. Funding Opportunity Title. Capacity Building for Community Development and Affordable Housing—Enterprise Foundation (Enterprise), Local Initiatives Support Corporation (LISC), Habitat for Humanity, and YouthBuild USA.

C. Announcement Type. Initial Announcement.

D. Funding Opportunity Number. FR-4925-N-01.

E. Catalog of Federal Domestic Assistance (CFDA) Number.

F. Dates. The application closing date will be no later than 100 days from the date of publication of this Notice in the Federal Register. HUD may elect to close this solicitation when applications have been received from the four named eligible applicants.

G. Eligible Applicants. Only Enterprise, LISC, Habitat for Humanity, and YouthBuild USA are eligible to receive funds.

**Full Text of Announcement**

**I. Funding Opportunity Description**

A. Program Purpose. Beginning in Fiscal Year (FY) 1994, HUD provided funding to Enterprise and LISC through the National Community Development Initiative (NCDI), as authorized by Section 4 of the HUD Demonstration Act of 1993. In accordance with authorizing statutes, HUD divided the appropriations equally between Enterprise and LISC. HUD published a notice in the Federal Register of March 30, 1994 (59 FR 14988), which set forth the requirements for receipt of these funds.

In subsequent years, pursuant to various appropriations acts, funding was made available to Enterprise, LISC, Habitat for Humanity, and YouthBuild USA. In each of these years, HUD published a notice in the Federal Register that contained requirements for the funds that were made available to LISC, Enterprise, Habitat for Humanity, and YouthBuild USA.

This notice establishes requirements for the use of the FY2004 funds. These funds may be used for new activities or, in the case of Enterprise and LISC, to continue NCDI activities that received funding under the notice dated March 30, 1994 (59 FR 14988). New grant agreements will be executed to govern the use of these funds.

B. Authority. The Consolidated Appropriations Act, 2004 (Pub.L. 108-199, approved January 23, 2004) (FY2004 Appropriations Resolution); and Section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note).

**II. Award Information**

A. Available Funds. The Consolidated Appropriations Act, 2004 (Pub. L. 108-199 approved January 23, 2004) appropriates \$36,750,000 for capacity building for community development and affordable housing as authorized by Section 4 of the HUD Demonstration Act of 1993. These funds are subject to an across-the-board rescission of 0.59 percent. Therefore, a total of

\$36,533,175 is available to be allocated from this appropriation.

B. Match. As required by Section 4 of the HUD Demonstration Act of 1993, the appropriation is subject to each award dollar being matched by \$3 in cash or in-kind contributions to be obtained from private sources. Each of the organizations receiving these funds will document its proportionate share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee after January 23, 2004, to conduct activities. In-kind contributions shall conform to the requirements of 24 CFR 84.23.

C. Anticipated Awards. HUD will provide this assistance through Enterprise, LISC, Habitat for Humanity, and YouthBuild USA "to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs."

Of the FY2004 funds appropriated for Section 4 activities, \$29,823,000 is made available in equal shares to Enterprise and LISC for activities authorized by Section 4, as in effect immediately before June 12, 1997. The funds are to be used for capacity building for community development and affordable housing, provided that approximately \$5 million of the funding is used in rural areas, including tribal areas. In addition, \$4,721,975 is appropriated to Habitat for Humanity and \$1,988,200 to YouthBuild USA for Section 4 activities. Each organization will match the HUD assistance with resources from private sources in an amount equal to three times its share, as required by Section 4. Enterprise and LISC each will use at least \$2.485 million of their \$14,911,500 share for activities in rural areas, including tribal areas. Therefore, a total of \$36,533,175 is available to be allocated, with Enterprise and LISC each receiving \$14,911,500, Habitat for Humanity receiving \$4,721,975, and YouthBuild USA receiving \$1,988,200.

D. Award Instrument. HUD will use a grant agreement.

### III. Eligibility Information

*A. Eligible Applicants.* The eligible applicants are Enterprise, LISC, Habitat for Humanity, and YouthBuild USA.

*B. Cost Sharing or Matching.*

Applicants are required to match each award dollar with \$3 in cash or in-kind contributions obtained from private sources.

*C. Other*

*1. Eligible Activities.* Eligible activities under this award include:

a. Training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations (CDCs) and community housing development organizations (CHDOs), including the capacity to participate in consolidated planning as well as in fair housing planning, continuum of care homeless assistance efforts, and HUD's Colonias initiative that help ensure community-wide participation in assessing area needs; consulting broadly within the community; cooperatively planning for the use of available resources in a comprehensive and holistic manner; and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

b. Loans, grants, development assistance, predevelopment assistance, and other financial assistance to CDCs/CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities that create jobs for low-income persons; and

c. Such other activities as may be determined by Enterprise, LISC, Habitat for Humanity, or YouthBuild USA in consultation with the Secretary or the Secretary's designee.

*2. Threshold Requirements.*

*a. DUNS Requirement.* The federal government requires that all applicants for federal grants and cooperative agreements with the exception of individuals, other than sole proprietors, have a valid Data Universal Numbering System (DUNS) number administered by Dun and Bradstreet. Applicants that fail to provide a DUNS number cannot receive funding from HUD. This policy is pursuant to the Office of Management and Budget (OMB) policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD's regulation implementing the DUNS Number requirement for its programs was issued

in the **Federal Register** on March 26, 2004 (69 FR 15671). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at <http://www.hud.gov/offices/adm/grants/duns.cfm>.

*b. Compliance with Fair Housing and Civil Rights Laws.* (1) Applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a).

(2) If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974; and

(d) The charge, lawsuit, or letter of findings referenced in subpart (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit or letter of findings taken prior to the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

*c. Ineligible Applicants.* HUD will not consider an application from an ineligible applicant.

*d. Conducting Business in Accordance With Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 (most nonprofit organizations and state, local, and tribal governments or government agencies or instrumentalities, that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real

and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this notice, you will be required, prior to entering into an agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. Failure to meet the requirement for a code of conduct will prohibit you from receiving an award of funds from HUD.

*e. Delinquent Federal Debts.*

Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of federal funds will be made to an applicant that has an outstanding delinquent Federal debt unless (1) the delinquent account is paid in full, (2) a negotiated repayment schedule is established and the repayment schedule is not delinquent, or (3) other arrangements satisfactory to HUD are made prior to the deadline submission date.

*f. Pre-Award Accounting System Surveys.* HUD may arrange for a pre-award survey of the applicant's financial management system in cases where the applicant or a subrecipient has no prior federal support, HUD's program officials have reason to question whether the applicant's or subrecipient's financial management system meets federal financial management standards, or the applicant or its subrecipient is considered a high risk based upon past performance or financial management findings. HUD will not disburse funds to any applicant or subrecipient that does not have a financial management system that meets federal standards.

*g. Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or a key individual, HUD reserves the right to (1) deny funding or consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the

award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

*h. False Statements.* A false statement in an application is grounds for denial or termination of an award and grounds for possible punishment as provided in 18 U.S.C. 1001.

*i. Debarment and Suspension.* In accordance with 24 CFR part 24, no award of federal funds may be made to applicants that are presently debarred or suspended, or proposed to be debarred or suspended, from doing business with the federal government. This requirement applies to all lower tier covered transactions and to all solicitations for lower tier covered transactions. The prohibition includes the following:

(1) Having principals who, within the previous three years, have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of a Federal or state anti-trust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(2) Charges or indictments by a governmental entity (federal, state and local) for commission of any of the above violations.

*3. Program Requirements.*

*a. Environmental Review.* Activities under this notice are subject to environmental review in accordance with 24 CFR part 50. Individual projects to be funded by these grants may not be known at the time the overall grants are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), by submitting the signed application the applicant is certifying that, if awarded funding, it will:

(1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not acquire, rehabilitate, convert, lease, repair, or construct property, or commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received.

*b. Section 3 Requirements.* If awarded funds under this program, the grantee

will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations at 24 CFR part 135. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of general local government in which the project is located.

*c. Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency.* Executive Order 13166 established requirements for improving access to information and materials for persons with limited English proficiency (LEP). Applicants obtaining an award from HUD must seek to provide access to program services, benefits and information to individuals with LEP through translation and interpretive services in accordance with LEP Guidance published on December 19, 2003 (68 FR 70967). For assistance and information regarding your LEP obligation, go to [www.LEP.gov](http://www.LEP.gov).

*d. Nondiscrimination Requirements.* Each organization receiving a grant under this notice and its subgrantees also must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*) and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

*e. Affirmatively Furthering Fair Housing.* Each organization receiving a grant under this notice and its subgrantees has a duty to affirmatively further fair housing. Each organization and subgrantee should include in its application or work plan the specific steps that it will take to remedy discrimination in housing and to promote fair housing rights and fair housing choice. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status.

*f. Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.* Compliance with HUD's regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under this NOFA.

*g. Lead-Based Paint Provisions.* Each organization receiving a grant under this notice and its subgrantees must comply with the applicable lead-based paint provisions of 24 CFR part 35, including subparts J and K.

*h. Accessible Technology.* The Rehabilitation Act Amendments of 1998 (the Act) applies to electronic information technology (EIT) used by HUD for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal funds awarded. The Act's coverage includes, but is not limited to, computers (hardware, software, word processing, email, and web pages), facsimile machines, copiers, and telephones. Consistent with the principles of the Act, HUD requires the same of its funding recipients. If you are a successful applicant, you will be required, when developing, procuring, maintaining, or using EIT, to ensure that the EIT allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that are comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, the recipient may provide an alternative means to allow the individual to gain access to and use the information and data. However, no recipient will be required to provide information services to a person with disabilities at any location other than a location at which the information services are generally provided.

*i. Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state that are using assistance under this NOFA for procurement and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services that maximize energy and resource recovery; and must have established an affirmative program for procurement of recovered materials identified in EPA's guidelines.

*j. Participation in HUD-Sponsored Program Evaluation.* As a condition of the receipt of financial assistance under

this NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

k. *Salary Limitation for Consultants.* FY2004 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant, whether retained by the federal government or the grantee, at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

#### IV. Application and Submission Information

A. *Address to Request Application Package.* Electronic submission. Applications must be submitted through the Grants.gov Web site at <http://www.grants.gov>. If an applicant needs assistance with its electronic application, it should contact the Grants.gov Customer Support Center at 800-519-4726 or through e-mail at [support@grants.gov](mailto:support@grants.gov). The customer support center is open from 7 a.m. to 9 p.m. Eastern time.

1. *Electronic Signature.* Applications submitted through Grants.gov will be considered an electronically signed application. Therefore, applicants need not submit a separate signed application.

2. *Grants.gov Registration.* There are six "Get Started" steps to complete at Grants.gov. The information that applicants need to understand and execute these steps is at <http://www.grants.gov/GetStarted>. Please be sure that the person you designate as the Authorized Organization Representative (AOR) is legally able to make a binding commitment for your organization.

3. *Notice.* This notice and related instructions for application may be downloaded from the Grants.gov Web site at <http://www.grants.gov/FindGrantOpportunities>. To find this opportunity on <http://www.grants.gov>, enter the funding opportunity number: FR-4925-N-01.

B. *Content and Form of Application Submission.* Applicants are required to submit an application containing the following:

1. *Standard Forms and Certifications.* Application for Federal Assistance (SF-424), Applicant Assurances and Certifications Form (SF-424B), Logic Model (HUD-96010), and Applicant/Recipient Disclosure/Update Report (HUD-2880).

2. *Checklist for Application Submission.* Assemble the application in the following order. Please enter page numbers on the narrative pages of the application.

- SF-424, Application for Federal Assistance
- An Application Cover Page indicating in bold (a) the type of grant you are requesting (NCDI Capacity Building, Non-NCDI Capacity Building, or Rural); and (b) the amount of funds requested in the application.
- HUD-96010, Logic Model
- HUD-424 CB, Grant Application Detailed Budget Form
- HUD-424 CBW, Detailed Budget Worksheet for Non-Construction Projects)
- SF-424 B, Assurances—Non-Construction Programs
- SF-LLL, Disclosure of Lobbying Activities
- HUD-2880, Applicant/Recipient Disclosure/Update Report

3. *Detailed Budgets.* Forms HUD-424-CB and HUD-424-CBW for the amount of funds being requested for Non-NCDI activities and a similar HUD-424-CB and HUD-424-CBW for any amounts to be committed to NCDI activities, with the budget summary identifying costs for implementing the plan of suggested technical assistance (TA) activities by cost category, as follows:

- a. Direct labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position, and the total estimated direct labor costs;
  - b. Fringe benefits by staff position, identifying the rate, the salary base on which the rate was computed, the estimated cost per position, and the total estimated fringe benefit cost;
  - c. Material costs, indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;
  - d. Transportation costs, if applicable;
  - e. Equipment charges, if any, identifying the type of equipment, quantity, unit costs, and total estimated equipment costs;
  - f. Consultant costs, if applicable, indicating the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant, and total estimated costs for all consultants;
  - g. Subcontract costs, if applicable, indicating each individual subcontract and amount;
  - h. Other direct costs, listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award; and
  - i. Indirect costs, identifying the type, approved indirect cost rate, base to which the rate applies, and total indirect costs.
4. *Work and Funding Plan.* Each grantee will submit to HUD a specific

work and funding plan for each community showing when and how the federal funds will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 30 days after submission of a specific work plan, HUD will approve it or notify the grantee of matters that need to be addressed prior to approval, or the work plan shall be considered approved. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until HUD approves the work plan. All activities also are subject to the environmental requirements in this notice.

Grantees will submit, as part of their work plan, indicators that measure the change in the condition of the neighborhoods (reduction in crime, increases in housing prices, decreases in vacancy rates, number of new businesses, etc.) in which the assisted CDC's operate relative to the larger geographic area.

The grantees assisted with these funds will make accomplishment and other relevant performance information available on the Internet for each CDC or other affiliate (e.g. Youthbuild grantee) assisted.

C. *Submission Dates and Time.* The application closing date will be no later than 100 days from the date of publication of this NOFA in the **Federal Register**. HUD may elect to close this solicitation when applications have been received from the four named eligible applicants.

D. *Intergovernmental Review.* Intergovernmental review is not applicable.

E. *Funding Restrictions.* Funding will be provided only to the four eligible applicants identified in this Notice.

F. *Other Submission Requirements.* All applicants for federal grants or cooperative agreements must provide a DUNS number (as explained in section III.C.2.a of this Notice) on their Form SF-424. Applicants applying through Grants.gov also need to register with the Federal Central Contractor Registry and with a credential provider. The Grants.gov website has online instructions for all registration requirements. Please allow up to two weeks to complete the registration process.

#### V. Application Review Information.

These grants will be awarded noncompetitively based on the submission of a complete application.

## VI. Award Administration Information

*A. Award Notices.* After HUD has reviewed an application and found it complete, HUD will notify the applicant in writing.

### *B. Administrative and National Policy Requirements.*

*1. Uniform Administrative Requirements.* The awards will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A-122 (Cost Principles for Nonprofit Organizations), and OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

*2. Wage Rates.* Unless triggered by other federal funds for a project under this grant, the requirements of the Davis-Bacon Act (40 U.S.C. 3141) do not apply.

*3. Relocation.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979 (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24 apply to anyone who is displaced as a result of acquisition, rehabilitation, or demolition of a HUD-assisted activity.

*C. Reporting.* Performance reporting is required on at least an annual basis, but may be more frequently required as identified below. The performance reports must contain the information required under 24 CFR part 84, and must include reporting against form HUD-96010, Logic Model, which includes a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans and Logic Model, each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate output and outcome measurements under the work plan. An example of such outputs and outcomes are: Output: the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of those units; Outcome: The total number of families housed as a result of the work. However, when the activity is not to be undertaken in a single community, or is not available at the time of application, the applicant must submit a work plan and Logic Model indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives as soon as the information is available. The performance reports must include a discussion of the reasonableness of the unit costs, the reasons for slippage if established objectives and goals are not met, the evaluation method and tools the grantee

is using to evaluate its performance and to ensure that it is meeting established goals and objectives, and information related to where the information is maintained. The report may also contain other relevant information that can assist HUD in assessing program progress and compliance with program requirements.

*1. Annual Performance Report.* Each grantee shall submit to HUD an annual performance report due 90 days after the end of each calendar year, with the first report due on March 31, 2005. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84.

*2. Additional Reporting.* Additional information or increased frequency of reporting, not to exceed twice a year, may be required by HUD any time during the grant agreement if HUD finds such reporting to be necessary for monitoring purposes.

*3. Presenting Annual Reports.* To further the consultation process and share results of progress, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC, during the life of the award.

*4. Final Report.* A final performance report, in the form described in section C above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

*5. Financial Reports.* Financial status reports shall be submitted semiannually on form SF-269A or such successor forms as may be adopted by the federal grantmaking agencies under Public Law 106-107, the Federal Financial Assistance Management Improvement Act of 1999.

*6. Prohibition Against Lobbying Activities.* Applicants for funding under this notice are subject to the provisions of Section 319 of Public Law 101-121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 *et seq.*).

The Byrd Amendment, which is implemented by regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that

are the subject of this notice. Therefore, applicants must file with their application a certification stating that they have not made and will not make any prohibited payment and, if any payment or agreement to make a payment of non-appropriated funds for these purposes has been made, a Form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995, which repealed Section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities that lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

## VII. Agency Contacts

**FOR FURTHER INFORMATION CONTACT:** Karen Williams, Office of Community Planning and Development, Department of Housing and Urban Development, 1835 Assembly Street, Columbia, SC 29201-2480; telephone number (803) 253-3009. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Information Relay Service at 800-877-8339 or by calling (202) 708-2565. Except for the "800" number, these are not toll-free telephone numbers.

## VIII. Other

*1. Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

*2. Federalism.* Executive Order 13132 (entitled "Federalism") prohibits an agency from promulgating policies that have federalism implications if the policies either impose substantial direct compliance costs on state and local governments and are not required by statute, or the policies preempt state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This notice does not have federalism implications and does not impose substantial direct compliance costs on

state and local governments nor preempt state law within the meaning of the Executive Order.

Dated: October 14, 2004.

**Nelson R. Bregón,**

*General Deputy, Assistant Secretary for Community Planning and Development.*

[FR Doc. E4-2723 Filed 10-19-04; 8:45 am]

BILLING CODE 4210-29-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### U.S. Fish and Wildlife Service and Confederated Salish and Kootenai Tribes; Draft Annual Funding Agreement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; reopening of public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) published in the **Federal Register** on July 14, 2004, a notice concerning requests for comments on a Draft Annual Funding Agreement (AFA) between the FWS and the Confederated Salish and Kootenai Tribes. The AFA covers activities at the National Bison Range Complex in Montana.

**DATES:** As announced on July 14, 2004, the public comment period for the Draft AFA ended on October 12, 2004. The FWS is reopening the public comment period for the Draft AFA until November 4, 2004. To be considered, your comments must be received by that date.

**ADDRESSES:** You may submit written comments to the U.S. Fish and Wildlife Service, National Bison Range, 132 Bison Range Road, Moiese, Montana 59824, or by facsimile to (406) 644-2661. You also may hand-deliver written comments to the National Bison Range at the address given above, or e-mail comments to [draftafapubliccomments@fws.gov](mailto:draftafapubliccomments@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Steve Kallin, Refuge Manager, National Bison Range, U.S. Fish and Wildlife Service, (406) 644-2211, extension 204.

**SUPPLEMENTARY INFORMATION:** The original notice published in the **Federal Register** on July 14, 2004, at 69 FR 42199.

Dated: October 13, 2004.

**Matt Hogan,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 04-23419 Filed 10-19-04; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-350-1430-PE-24 1A]

#### OMB Control Number 1004-0009; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted an extension of a currently approved collection to collect the information listed below to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On February 5, 2003, the BLM published a notice in the **Federal Register** (68 FR 5912) requesting comment on this information collection. The comment period ended on April 7, 2003. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004-0009), at OMB-OIRA via facsimile to (202) 395-6566 or e-mail to [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov). Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO-630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

**Nature of Comments:** We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information we collect; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

**Title:** Land Use Application and Permit (43 CFR 2920).

**OMB Control Number:** 1004-0009.

**Bureau Form Number:** 2920-1.

**Abstract:** The BLM uses the information to allow State and local governments and private citizens to use, occupy, or develop the public lands under certain conditions. The land uses that may be authorized are agriculture development, residential uses, recreation concessions, and business uses, industrial uses, and commercial uses.

**Frequency:** Once.

**Description of Respondents:** States and local governments, and nonprofit corporations and associations.

**Estimated Completion Time:** Varies 1-120 hours.

**Annual Responses:** 590.

**Information Collection Cost Recovery Fee:** \$22 for permits and easements and \$242 for leases.

**Annual Burden Hours:** 2,137.

**Bureau Clearance Officer:** Ian Senio, (202) 452-5033.

Dated: October 8, 2004.

**Ian Senio,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 04-23462 Filed 10-19-04; 8:45 am]

BILLING CODE 4310-84-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-300-1020-PH]

#### Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held November 10, 2004 at the BLM Idaho Falls District Office, 1405 Hollipark Drive, in Idaho Falls, Idaho. The meeting will start at 9 a.m., with the public comment period as the first agenda item. The meeting will adjourn at about 3:30 p.m.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Upper Snake

River District (USRD), which covers south-central and southeast Idaho. At this meeting, topics we plan to discuss include:

- Orientation for new members of the RAC.
- Election of new RAC Officers for the 2004–2005 term.
- The RAC's work plan for the coming year.
- Updates on major planning projects in the District.
- Other current issues as appropriate.
- Other items of interest raised by the Council.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

The meetings for 2005 will also be set at this meeting, and the dates and times will be announced in a future **Federal Register** Notice and through local media.

**FOR FURTHER INFORMATION CONTACT:**

David Howell, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524-7559. E-mail: [David\\_Howell@blm.gov](mailto:David_Howell@blm.gov).

Dated: October 14, 2004.

**Joe Kraayenbrink,**  
*District Manager.*

[FR Doc. 04-23437 Filed 10-19-04; 8:45 am]

**BILLING CODE 4310-GG-P**

**MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION**

**Sunshine Act Meetings**

**TIME AND DATE:** 9 a.m. to 12 p.m., Friday, November 12, 2004.

**PLACE:** The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

**STATUS:** This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

**MATTERS TO BE CONSIDERED:** (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) A report from

the Udall Center for Studies in Public Policy; (3) A report on the Native Nations Institute; (4) Program Reports; and (5) A Report from the Management Committee.

**PORTIONS OPEN TO THE PUBLIC:** All sessions with the exception of the session listed below.

**PORTIONS CLOSED TO THE PUBLIC:** Executive session.

**CONTACT PERSON FOR MORE INFORMATION:**

Christopher L. Helms, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 670-5529.

Dated: October 15, 2004.

**Christopher L. Helms,**

*Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.*

[FR Doc. 04-23609 Filed 10-18-04; 2:49 pm]

**BILLING CODE 6820-FN-M**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 04-113]

**NASA Aeronautics Research Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a meeting of the Aviation Safety Reporting System Subcommittee (ASRSS).

**DATES:** Wednesday, November 3, 2004, 8:30 a.m. to 5 p.m.

**ADDRESSES:** National Air Traffic Controllers Association, 1325 Massachusetts Avenue NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, (650) 960-6059.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Opening Remarks
- Program Status
- Strategic Planning
- Closing Comments

It is imperative that the meeting be held on these dates to accommodate the

scheduling priorities of the key participants.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 04-23407 Filed 10-19-04; 8:45 am]

**BILLING CODE 7510-13-P**

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**

**Proposed Collection, Comment Request, Program Guidelines, Report Forms, Reviewer Forms**

**AGENCY:** Institute of Museum and Library Services.

**ACTION:** Notice of requests for information collection.

**SUMMARY:** The Institute of Museum and Library Services 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 collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. Section 3508(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. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed collection of application information for Librarians for the 21st Century, Native American/ Native Hawaiian Library Services reporting forms, Grants for State Library Administrative Agencies financial report form, and reviewer forms.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before December 20, 2004.

IMLS is particularly interested in comments that help the agency to:

- 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 collocation 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 submissions of responses.

**ADDRESSES:** Send comments to: Rebecca Danvers, Director, Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202-606-2478 Fax: 202-606-0395 or by e-mail at [rdanvers@imls.gov](mailto:rdanvers@imls.gov).

#### SUPPLEMENTARY INFORMATION:

**Background:** The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. Section 9101, *et seq.* The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act, 20 U.S.C. Section 9101, *et seq.* authorizes the Director of the Institute of Museum and Library Services to make grants to museums, libraries, and other entities as the Director considers appropriate, and to Indian tribes and to organizations that primarily serve and represent Native Hawaiians. In addition, IMLS awards financial assistance to State Library Administrative Agencies, which are responsible for promoting library services throughout the country.

#### Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines, reports and collect information about reviewers.

**Agency:** Institute of Museum and Library Services.

**Title:** Application Guidelines, reporting forms, reviewer forms.

**OMB Number:** 3137-0049, n/a.

**Agency Number:** 3137.

**Frequency:** Annually.

**Affected Public:** Museums, museum organizations, libraries, library organizations, institutions of higher education, Indian tribes and to organizations that primarily serve and

represent Native Hawaiians, and museum and library professionals.

**Number of Respondents:** 3100.

**Estimated Time Per Respondent:** .25-40 hours.

**Total Burden Hours:** 4000.

**Total Annualized capital/startup costs:** 0.

**Total Annual costs:** 0.

#### FOR FURTHER INFORMATION CONTACT:

Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606-2478.

Dated: October 12, 2004.

**Rebecca Danvers,**

*Director, Office of Research and Technology.*

[FR Doc. 04-23405 Filed 10-19-04; 8:45 am]

**BILLING CODE 7036-01-M**

#### NATIONAL SCIENCE FOUNDATION

##### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

#### FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 9, 2004 and September 7, 2004, the National Science Foundation published notices in the **Federal Register** of a permit application received, and a permit modification request. The permit and modification were issued on October 4, 2004 and October 14, 2004 respectively to:

Yu-Ping Chin, Permit No. 2005-012

Wayne Z. Trivelpiece, Permit No. 2001-011 Mod 2

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 04-23464 Filed 10-19-04; 8:45 am]

**BILLING CODE 7555-1-M**

#### NATIONAL SCIENCE FOUNDATION

##### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the antarctic conservation act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a skiing/climbing expedition in the Antarctic interior. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 19, 2004. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

#### FOR FURTHER INFORMATION CONTACT:

Nadene Kennedy at the above address or (703) 292-8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of an expedition to Antarctica. Ice Axe Productions, Inc. plans to conduct various climbing and camping expeditions to a selection of mountains and peaks within Antarctica over the next 5 seasons. This season 3 experienced climbers and photographers will climb Mt. Tyree in the Ellsworth Mountains. The team will travel from Punta Arenas, Chile to the Patriot Hills, then by Twin Otter to Mt. Tyree where they will set up a base camp. The team's camping facilities will be basic and mobile. The team will use white gas for cooking. All wastes will be collected and transported back to Punta Arenas, Chile for disposition.

Application for the permit is made by: Doug Stoup, President, Ice Axe Productions, Inc., 17580 Walden Drive, Truckee, CA 96161.

**Location:** Patriot Hills, and various mountains and peaks within Antarctica. During the 2004-05 season, Mt. Tyree, Ellsworth Mountain range.

**Dates:** November 1, 2005 to February 28, 2009.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 04-23465 Filed 10-19-04; 8:45 am]

**BILLING CODE 7555-01-M**

**NATIONAL SCIENCE FOUNDATION****Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95-541)**

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act as Title 45 Part 670 of the Code of Federal Regulations. This is the required notice to permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or view with respect to this permit application by November 19, 2004. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292-7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2005-016

1. *Applicant:* Julie Rose, 3616 Trousdale Parkway, AHF 301, Los Angeles, CA 90089-0371.

*Activity for Which Permit is Requested:* Introduce a non-indigenous species to Antarctica. The applicant proposes to use marine phytoplankton cultures and non-fluorescent marine bacterial cultures to study the feeding rates of Antarctic protistan grazers. Marine phytoplankton samples will be collected during the course of the cruise and the samples will be taken back to the United States for further study.

*Location:* Southern Oceans south of 60 degrees South, and Ross Sea.

*Dates:* December 1, 2004 to February 1, 2005.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 04-23466 Filed 10-19-04; 8:45 am]

**BILLING CODE 7555-01-M**

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-293]

**Entergy Nuclear Operations, Inc., Pilgrim Nuclear Power Station; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-35 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Pilgrim Nuclear Power Station located in Plymouth, MA.

The proposed amendment would approve an engineering evaluation performed in accordance with Pilgrim Nuclear Power Station Technical Specification (TS) 3.6.D.3 to justify continued power operation with safety relief valve (SRV)-3C discharge pipe temperature exceeding 212 degrees Fahrenheit (°F) for greater than 24 hours as required by TS 3.6.D.4.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Indication of elevated SRV discharge pipe temperature is attributed to leakage past the SRV pilot valve. Excessive leakage, corresponding to temperatures greater than 255°F, has the potential to affect SRV operability by affecting the SRV setpoint or response time. Continued operation with the discharge pipe of the SRV indicating temperatures less than 255°F ensures that the leakage past the SRV is maintained below the threshold for a leakage rate that would potentially have an effect on SRV setpoint or response time.

Administrative controls are in place to ensure that margin to the 255°F value is maintained to assure reliable operation and to reduce the potential for damage to the SRV pilot seat and disc. The SRV continues to perform the intended design/safety function with no adverse effect because the leakage past the SRV is maintained below the threshold for a leakage rate that could potentially have an adverse impact on the ability of the SRV to perform the design function. The impact of the leakage on other systems is small and all systems continue to be able to perform their intended design functions. Current accident analyses remain bounding and there is no significant increase in the consequences of any accident previously evaluated. In addition, as a result of the leakage, normal plant operating parameters are not affected and consequently there is no increased risk in a plant transient.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated[.]

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Continued plant operation with elevated SRV-3C discharge pipe temperature within the bounds of the established administrative controls ensures that the leakage past the SRV is maintained below the threshold for a leakage rate that would potentially have an effect on SRV setpoint or response time. This ensures that the SRV will perform the intended design/safety function. The leakage does not adversely impact the ability of any system to perform its design function. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Continued operation with the of SRV-3C discharge pipe indicating temperature in excess of 212 °F does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The leakage does not result in excess SRV setpoint drift or response time

changes. The imposed administrative controls on plant operation provide assurance that there will be no adverse effect on the ability of the SRV to perform the intended design/safety function. There are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public

Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific

contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the

Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360-5599, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 12, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 14th day of October, 2004.

For the Nuclear Regulatory Commission.

**George F. Wunder,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-23427 Filed 10-19-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7005]

### Issuance of Environmental Assessment and Finding of No Significant Impact for Modification of Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Waste Control Specialists, LLC., Andrews County, TX

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact.

#### FOR FURTHER INFORMATION CONTACT:

James R. Park, Project Manager, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-5835; Fax number: (301) 415-5397; E-mail: [jrp@nrc.gov](mailto:jrp@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order pursuant to Section 274f of the Atomic Energy Act that would modify an Order transmitted to Waste Control Specialists, LLC (WCS) on November 21, 2001. The Order was published in the **Federal Register** on November 15, 2001 (66 FR 57489). The 2001 Order exempted WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR part 150, at WCS's facility located in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70.

The current action is in response to a request by WCS dated August 6, 2003, as modified by letter dated March 15, 2004. NRC has prepared an Environmental Assessment (EA) in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed action as modified with additional conditions. The modified Order that incorporates the results of the NRC staff's evaluation will be issued following the publication of this Notice.

## II. Environmental Assessment

### Background

As stated above, the 2001 Order exempted WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing SNM, in greater quantities than specified in 10 CFR part 150, at WCS's facility located in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70. The 2001 Order permits WCS to possess SNM without regard for mass. Rather than relying on mass to ensure criticality safety, concentration-based limits are being applied, such that accumulations of SNM at or below these concentration limits would not pose a criticality safety concern. The methodology used to establish these limits is discussed in the 2001 Safety Evaluation Report (SER) that supported the 2001 Order.

The WCS facility is licensed by the State of Texas, an NRC Agreement State, under a 10 CFR part 30 equivalent radioactive materials license. The facility also is licensed by the Texas Commission on Environmental Quality to treat and dispose of hazardous waste. In 1997, WCS began accepting Resource Conservation and Recovery Act (RCRA) and Toxic Substance Control Act (TSCA) wastes for treatment, storage, and disposal. Later that year, WCS received a license from the Texas Department of Health for treatment and storage of mixed waste and low-level waste. The mixed waste and low-level waste streams may contain quantities of SNM.

By letter dated August 6, 2003, WCS requested that the list of reagents identified in Condition 5 of the 2001 Order be modified to include an additional 18 reagents. WCS uses reagents in chemically stabilizing mixed waste that contains SNM. In response to an NRC staff request for additional information dated September 30, 2003, WCS submitted a modified request by letter dated March 15, 2004.

### Review Scope

The purpose of this EA is to assess the environmental impacts of WCS's requested modification to its 2001 Order. This EA does not approve or deny the requested action. A separate Safety Evaluation Report (SER) also will be issued in support of the approval or denial of the requested action. This EA will determine whether to issue or prepare an Environmental Impact Statement (EIS). Should the NRC issue a FONSI, no EIS will be prepared.

### Proposed Action

The proposed action is to grant WCS's March 15, 2004, request to add 22 specified stabilization and oxidation-reduction reagents to Condition 5 of the 2001 Order. These reagents would be used in WCS's stabilization of mixed waste that contains SNM.

### Purpose and Need for Proposed Action

WCS is making this request so that it can treat incoming mixed waste that contains SNM using appropriate reagents. In seeking NRC approval of the reagents specified in its request, WCS hopes to avoid making multiple requests for NRC approval of stabilization reagents.

### Alternatives

In addition to the proposed action, the NRC staff considered two alternatives. One alternative was to deny WCS's request and thus not revise the Order (*i.e.*, the no-action alternative). The second alternative was to revise the Order to remove the specific chemical names from Condition 5 and instead to add a per-batch, mass limit for stabilization not to exceed the concentration limits in Condition 1 of the Order times 600 kilograms (kg) of waste.

### Environmental Impacts of No Action Alternative

For the no-action alternative, the environmental impacts would be the same as those evaluated in the EA that supports the 2001 Order. The regulations regarding SNM possession in 10 CFR part 150 set mass limits whereby a licensee is exempted from the licensing requirements of 10 CFR part 70 and can be regulated by an Agreement State. The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. Based on previous modeling and past experience, the NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the specified conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11; thereby, assuring the same level of protection. The 2001 EA concluded that the 2001 Order would have no significant radiological or non-radiological environmental impacts.

### Environmental Impacts of Proposed Action

By letter dated March 15, 2004, WCS discussed its use of chemical reagents and requested that the list of reagents identified in Condition 5 of the Order be modified to include an additional 22 reagents. In reviewing WCS's request, the NRC staff identified four reagents (potassium permanganate, sulfuric acid, phosphoric acid, and hydrochloric acid) that could change the solubility of the SNM in the mixed waste being treated, thus potentially changing its concentration. As discussed previously, the principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The addition of reagents that could increase the concentration of SNM poses a criticality concern.

The proposed action could allow for more SNM to be stored on site. In addition, the NRC staff has identified a criticality safety concern. Effluent releases and potential doses to workers and to the public could increase as a result of WCS's use of specific reagents in treating mixed waste containing SNM. These releases and doses are regulated by the State of Texas.

The proposed action is not expected to result in any changes to the transportation impacts identified in the 2001 EA. While WCS's request concerns mixed waste containing SNM that currently is or will be treated at its facility, WCS believes that approval of its request will not result in any change in its market opportunities for treating various waste streams.

### Environmental Impacts of Proposed Action With Additional Conditions

As indicated previously, the NRC staff identified criticality safety concerns with WCS's proposed action. Therefore, under the proposed action as modified with additional conditions, NRC would modify Condition 5 of the Order to remove the names of specific reagents and instead require that WCS, in treating each container of mixed waste containing SNM, meet a mass limit for stabilization. Currently, Condition 1 sets concentration limits for SNM in individual containers and/or during processing. The amended Condition 5 would set the mass limit for batches of greater than 600 kg of waste at the concentration limits in Condition 1 times 600 kg of waste. Condition 1 concentration limits would continue to apply to batches of 600 kg of waste or less. Use of the mass limit in Condition 1 for contiguous masses of waste of greater than 600 kg reduces criticality safety concerns since accumulations of

SNM at this concentration limit would not pose a criticality safety concern.

In an electronic mail message (email) to WCS dated April 26, 2004, the NRC staff documented telephone discussions with WCS concerning the proposed action with additional conditions. By a response email dated April 27, 2004, WCS agreed to the NRC staff's proposed revision to Condition 5 of the Order.

This modification would allow WCS to use the chemical reagents identified in its submittals, as well as other reagents, so long as the applicable mass limit for stabilization was met. WCS would continue to be restricted from using magnesium oxide in the treatment, per Condition 2 of the 2001 Order.

In addition, the amended Condition 5 would continue to allow WCS to use reagents as part of its currently approved stabilization process, which includes oxidation-reduction, pH adjustment, and bulking. This understanding was clarified in a series of emails dated August 3, 10, and 13, 2004, between the NRC staff and WCS.

Other conditions of the Order would remain unchanged. Currently, WCS is permitted to possess SNM without regard for mass. Instead, to insure criticality safety, a concentration limit is applied, such that accumulations of SNM at or below this concentration limit would not pose a criticality safety concern.

Effluent releases and potential doses to the public are regulated by the State of Texas and are not anticipated to change as a result of this action. WCS will continue to conduct its radiation protection program with an emphasis on maintaining doses as low as reasonably achievable. Occupational exposure are expected to remain within regulatory limits.

The proposed action would not result in any changes in the transportation impacts identified in the 2001 EA. While WCS's request concerns mixed waste containing SNM that currently is or will be treated at its facility, WCS believes that approval of its request will not result in any change in its market opportunities for treating various waste streams.

All other environmental impacts would be the same as evaluated in the EA that support the 2001 Order.

### Conclusion

Based on its review, the staff concluded in the SER for this exemption request that the proposed action (*i.e.*, revise the exemption as requested by WCS without additional conditions) would not provide sufficient protection of health, safety, and the environment.

Therefore, staff's preferred alternative is to revise the 2001 Order with additional conditions. These include adding a per-batch, mass limit for stabilization not to exceed the concentration limits in Condition 1 of the exemption times 600 kg of waste and continuing to restrict WCS from using magnesium oxide in stabilization, per Condition 2 of the exemption. The staff has concluded that, with these revised conditions, the conclusion in the 2001 EA associated with the 2001 Order remains valid.

#### Agencies and Persons Consulted

A draft copy of this EA was provided to officials from the State of Texas Department of Health (TDH). By an e-mail dated August 11, 2004, the TDH recommended certain editorial changes. The NRC staff has modified the EA to address the TDH comments.

#### III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

#### IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document description	Accession No.
August 6, 2003, WCS initial request.	ML032590937
September 30, 2003, NRC request for additional information.	ML032731010
March 15, 2004, WCS modified request.	ML041350224
September 2004 NRC SER	ML042250362
April 26 and 27, 2004, NRC and WCS email messages.	ML042450534
August 11, 2004, TDH email message.	ML042450520
August 3, 10 and 13, 2004 NRC and WCS email messages.	ML042450511
November 21, 2001, NRC EA, SER, and Order.	ML030130085

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR)

Reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 14th day of October 2004.

For the Nuclear Regulatory Commission.

#### Mark Thaggard,

Section Chief, Environmental & Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04-23428 Filed 10-19-04; 8:45 am]

BILLING CODE 7590-01-P

### NUCLEAR REGULATORY COMMISSION

#### Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on October 28 and 29, 2004, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, October 28, 2004—8:30 a.m.*

*until the conclusion of business*

*Friday, October 29, 2004—8:30 a.m.*

*until the conclusion of business*

The purpose of this meeting is to review the proposed rule package for risk-informing 50.46. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (Telephone: 301-415-6927) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting the Designated Federal Officials between 7:30 a.m. and 4:15 p.m. (ET).

Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 14, 2004.

#### John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 04-23429 Filed 10-19-04; 8:45 am]

BILLING CODE 7590-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50536; File No. SR-FICC-2004-07]

#### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Fixed Income Clearing Corporation's Rules To Eliminate the "Mortgage Banker" Category of Membership in its Mortgage-Backed Securities Division

October 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that on March 25, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 21, 2004 and October 14, 2004, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the rules of its Mortgage-Backed Securities Division ("MBSD") to eliminate the "mortgage banker" category of membership.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B),

<sup>1</sup> 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of these statements.<sup>2</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In accordance with Article III, Rule 1, Section 2, "Financial Requirements for Participants and Limited Purpose Participants," of MBSB's Rules, mortgage bankers are subject to a minimum net worth requirement of \$5 million. With the exception of "brokers," all other applicants are subject to a minimum net worth or regulatory net capital requirement of \$10 million.<sup>3</sup>

Historically, mortgage bankers (which generally act as mortgage originators) maintained relatively little capital. FICC considered a lower minimum capital standard appropriate to enable and encourage these types of firms to participate in FICC. The mortgage banker category of membership is now becoming obsolete for two principal reasons. First, changes in the mortgage business are causing small originators to use Fannie Mae and Freddie Mac making MBSB membership less desirable and therefore making the relatively lower minimum capital standard less justified. Second, from a membership administration perspective there appears to be no precise, uniform definition for "mortgage banker."<sup>4</sup>

FICC is proposing to eliminate the mortgage banker category from the MBSB Rules. If approved by the Commission, entities that would have previously qualified as mortgage bankers would be classified under the catch-all category of membership in Article III, Rule 1, Section 1, "Applicants Eligible to Become Participants or Limited Purpose Participants."<sup>5</sup> This classification would increase the minimum net worth requirement from \$5 million to \$10 million for these members. FICC does not anticipate that this increase will

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> MBSB's Rules define "broker" as a member that is in the business of buying and selling securities as agent on behalf of dealers. Brokers are currently subject to a minimum net or liquid capital requirement of \$5 million.

<sup>4</sup> Mortgage originators are state-regulated entities, and definitions of such entities vary with each state. Generally, these definitions target entities whose "primary" business is the issuance of mortgages. MBSB has historically classified entities as mortgage bankers based upon an applicant's representations made in its membership application and confirmed by management's review of the applicant's business.

<sup>5</sup> Article III, Rule 1, Section 1(f) provides a catch-all category for "firms in such other categories as [FICC] from time to time may determine."

adversely affect existing mortgage banker members because member financial statements filed with FICC indicate that each mortgage banker member's capitalization currently exceeds the new minimum.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to FICC. By removing the mortgage banker category from the MBSB Rules and by providing that entities that currently are classified as such meet a higher minimum financial requirement, it enhances the ability of FICC to maintain a financially sound membership base without an adverse effect on itself or its members. As such, the proposed rule change should promote the safeguarding of securities and funds that are in the custody or control of FICC.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2004-07 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-FICC-2004-07. 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 FICC and on FICC's Web site at <http://www.ficc.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2004-07 and should be submitted on or before November 10, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2721 Filed 10-19-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50526; File No. SR-OCC-2004-13]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Borrowing Against the Clearing Fund

October 13, 2004.

#### I. Introduction

On June 23, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2004-13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the *Federal Register* on September 7, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change amends Article VIII of OCC's By-Laws, which authorizes OCC to borrow against the clearing fund in specified situations. Section 5(e) of Article VIII of OCC's By-Laws authorizes OCC to take possession of and pledge as security for a loan cash and securities in its clearing fund under the following circumstances:

(1) If a clearing member is suspended and OCC is unable to obtain prompt delivery of or convert promptly to cash any asset credited to any of the clearing member's accounts and as a result OCC deems it necessary or advisable to borrow funds to meet obligations arising out of the suspension or

(2) If OCC sustains a loss due to the failure of a bank or another clearing organization, and elects to borrow funds in lieu of immediately charging the loss to the clearing fund.

In either case, OCC must first determine that it cannot borrow the necessary funds on an unsecured basis and must use the proceeds from the borrowing solely for the purposes above. Such use of clearing fund assets are limited to a maximum of 30 days. After 30 days, the amount of the loan must be charged against the clearing fund.

In the event of a clearing member default, OCC may need immediate liquidity even before it has made the decision to suspend the clearing member. Historically, defaults tend to

occur at 9 a.m. (CT) when clearing members' accounts are debited for options premiums, exercise settlement payments, and mark-to-market payments.<sup>3</sup> Although OCC may be able to make settlement by using its own cash or by borrowing against its unsecured credit lines, which are currently \$20 million, it is possible that those resources would not be sufficient.

Under the current By-Laws provisions in order to borrow against its secured lines of credit, which are currently \$150 million and are in the process of being doubled, using a defaulting member's clearing fund contributions or collateral, OCC would have to (i) suspend the clearing member and (ii) have difficulty in obtaining or liquidating the defaulting clearing member's collateral. If a default is not quickly remedied, OCC will likely suspend the defaulting clearing member. However, OCC believes that it should not have to make the decision to suspend as a precondition to borrowing against the clearing fund. Similarly, OCC believes that it should not be a precondition to such use of the clearing fund that OCC is unable to obtain "prompt" delivery of or convert "promptly" to cash any asset credited to an account of a defaulting clearing member. OCC interprets "prompt" and "promptly" in this context as meaning "in sufficient time to enable OCC to use the proceeds to meet its obligations." However, OCC does not believe that its ability to such use of the clearing fund should turn on questions of interpretation.

Accordingly, OCC is amending Article VIII, Section 5(e) of its By-Laws to eliminate the requirements that OCC (i) suspend a defaulting clearing member and (ii) be unable to obtain prompt delivery of collateral or be unable to convert it promptly to cash as preconditions to use of the clearing fund. As amended, Section 5(e) will allow OCC to use clearing fund assets as collateral for loans whenever OCC deems such borrowings to be necessary or advisable in order to meet obligations arising out of the default or suspension of a clearing member or any action taken by OCC in connection therewith.

OCC believes that the proposed rule change is consistent with Section 17A of the Act and the regulations thereunder because it enhances OCC's ability to respond to and manage clearing member defaults in a manner that increases the protection of investors and persons facilitating transactions by and acting on

behalf of investors and because it limits systematic risk.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>4</sup> OCC's By-Laws currently provide that OCC may borrow against the clearing fund to meet its obligations in the event a clearing member is suspended and OCC cannot promptly access the clearing member's assets. The proposed rule change modifies OCC's By-Laws by allowing OCC to borrow against the clearing fund if a clearing member defaults on its obligations without having to suspend the clearing member and determine that it cannot obtain or liquidate the member's assets. The proposed rule change should allow OCC to more readily have the liquidity it may need in the event of a clearing member default and does not otherwise affect the rights and obligations of OCC or its members regarding the clearing fund.

Accordingly, because the proposed rule change is designed to help assure that OCC will be able to meet its settlement obligations and does not jeopardize the integrity of OCC's clearing fund, it is designed to assure the safeguarding of securities and funds which are in the custody or control of OCC or for which OCC is responsible.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2004-13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2722 Filed 10-19-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 50280, (August 27, 2004), 69 FR 54172.

<sup>3</sup> This is also the time when members' accounts are debited for margin deficiencies, but margin payments, unlike premium, exercise settlement, and mark-to-market payments, are not pass-through payments.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

**SMALL BUSINESS ADMINISTRATION****Data Collection Available for Public Comments and Recommendations**

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before December 20, 2004.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman Karton, Program Manager, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street SW., Suite 6400, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Rachel Newman Karton, Program Manager, (202) 619-1816 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Quarterly Reports for Drug Free Workplace Program."

*Description of Respondents:* Eligible Intermediaries who have received a Drug Free Workplace Program grant.

*Form No:* N/A.

*Annual Responses:* 48.

*Annual Burden:* 1,344.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 04-23463 Filed 10-19-04; 8:45 am]

**BILLING CODE 8025-01-P**

**DEPARTMENT OF STATE**

[Public Notice 4863]

**Rescission of Determination Regarding Iraq**

In accordance with Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), I hereby rescind the Determination of September 13, 1990 (Public Notice 1264) that Iraq is a country which has repeatedly provided support for acts of international terrorism.

This action is a further step to cement the partnership of the United States and Iraq in combating acts of international terrorism, and is an act of symbolic

importance to the new Iraqi government. This rescission is appropriate although nearly all the restrictions applicable to countries that have supported terrorism, including the application of 22 U.S.C. 1605(a)(7), were made inapplicable with respect to Iraq permanently in Presidential Directive No. 2003-23 of May 7, 2003, pursuant to sec. 1503 of Pub. L. 108-11, and as affirmed in the Conference Report for Pub. L. 108-106.

This rescission shall also satisfy the provisions of section 620A(c)(1) of the Foreign Assistance Act of 1961, Pub. L. 87-195, as amended, and section 40(f)(1)(A) of the Arms Export Control Act, Pub. L. 90-629, as amended.

Dated: October 7, 2004.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 04-23470 Filed 10-19-04; 8:45 am]

**BILLING CODE 4710-08-P**

**DEPARTMENT OF STATE**

[Public Notice 4823]

**Shipping Coordinating Committee Notice of Meeting**

The Shipping Coordinating Committee (SCC) will conduct an open meeting between 10:30 a.m. and 12 p.m. on Wednesday, 10 November 2004, in Room 4420, at U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. The primary purpose of the meeting is to finalize preparations for the 93rd Session of the International Maritime Organization (IMO) to be held at the IMO Headquarters in London, England from 15 November to 19 November 2004.

The primary matters to be considered include:

- Report on the status of Conventions and other multilateral instruments.
- Consideration of the strategy and policy of the Organization.
- Voluntary IMO Member State Audit Scheme.
- Resource management and other financial matters.
- Consideration of the report of the Organization's Committees.
- Report on World Maritime Day 2004.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard (G-CI), 2100 Second Street, SW., Washington, DC 20593-0001 or by calling: (202) 267-2246.

Dated: October 12, 2004.

**Margaret F. Hayes,**

*Chairman, Shipping Coordinating Committee, Department of State.*

[FR Doc. 04-23468 Filed 10-19-04; 8:45 am]

**BILLING CODE 4710-07-P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board**

[STB Finance Docket No. 34540]

**The Columbus & Ohio River Rail Road Company—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.**

The Columbus & Ohio River Rail Road Company (CUOH), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 114 miles of rail line: (1) By purchase, between Columbus, OH, milepost BP 138.0, and Newark, OH, milepost BQ 0.0, totalling approximately 32.6 miles;<sup>1</sup> and (2) by lease, between Mt. Vernon, OH, milepost BQ 25.9, and Cambridge, OH, milepost BP 49.49, via Newark, milepost BQ 0.0, totalling approximately 81.4 miles.<sup>2</sup> The lines are located in Franklin, Licking, Muskingum, Knox, and Guernsey Counties, OH. CUOH states that following this transaction, CSXT will no longer operate trains on any of the above-described rail lines, and that CUOH will be the sole operator of the rail lines. The transaction also includes approximately 1.5 miles of incidental trackage rights assigned by CSXT to CUOH over a line of the Ohio Southern Railroad, Inc. (OSR)<sup>3</sup> between milepost 16.7 and milepost 18.2 in Zanesville, OH.<sup>4</sup>

<sup>1</sup> CSXT presently holds a 50% ownership interest in the rail line from Columbus to Newark (the C&N Subdivision). The balance of the ownership interest in this line is held by the State of Ohio, and both CUOH and CSXT currently hold operating rights over the C&N Subdivision. *See Caprail I—Acquisition Exemption—Consolidated Rail Corporation*, Finance Docket No. 31961 (Sub-No. 1), *Ohio Department of Transportation—Lease Exemption—Caprail I Lines in Ohio*, Finance Docket No. 31961 (Sub-No.2), and *Columbus & Ohio River Railroad Company—Lease and Operation Exemption—Ohio Department of Transportation Lines*, Finance Docket No. 31961 (Sub-No. 3) (ICC served Jan. 15, 1992). CUOH states that, through this transaction, it will purchase CSXT's 50% share in the Columbus to Newark line.

<sup>2</sup> The line to be leased consists of the Lake Erie Subdivision (Newark to Mt. Vernon) and the Central Ohio Subdivision (Newark to Cambridge).

<sup>3</sup> OSR and CUOH are subsidiaries of Summit View, Inc., a noncarrier holding company.

<sup>4</sup> Prior to this transaction, CUOH and the Ohio Central Railroad (OHCR) interchanged traffic at Morgan Run (Coshocton), OH. Following this

Because CUOH's projected annual revenues will exceed \$5 million, CUOH certified to the Board on August 30, 2004, that it had complied with the requirements of 49 CFR 1150.42(e) providing for notice to employees and their labor unions on the affected lines. CUOH also certified that its projected revenues as a result of this transaction would not result in the creation of a Class II or Class I rail carrier.

The transaction is scheduled to be consummated on October 29, 2004, which is 60 days after CUOH's certification to the Board that it has complied with the Board's rule at 49 CFR 1150.42(e).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.<sup>5</sup>

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34540, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Andrew B. Kolesar III, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: October 14, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 04-23448 Filed 10-19-04; 8:45 am]

**BILLING CODE 4915-01-P**

transaction, CUOH and OHCR will exchange traffic at both Coshocton and Zanesville.

<sup>5</sup> On September 13, 2004, the Brotherhood of Locomotive Engineers & Trainmen (BLET) filed a protest asking the Board to reject CUOH's notice and a notice filed in *Indiana & Ohio Central Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34536 (STB served Oct. 1, 2004), for another shortline carrier to operate through lease approximately 107 miles of CSXT's rail line between NA Tower, OH, and Oakley, OH, and Oakley and Columbus, Ohio. On September 15, 2004, the United Transportation Union (UTU) filed a pleading titled as a petition to revoke, seeking relief identical to that sought by BLET. In their filings, BLET and UTU sought the same relief regarding CUOH's notice filed here.

On September 24, 2004, an amended petition to revoke was filed by UTU. By facsimile filed on September 30, 2004, UTU certified to the Board that it served a copy of its pleadings upon CUOH. And, on October 1, 2004, Indiana & Ohio Central Railroad, Inc. filed a reply. The Board will address these filings in a subsequent decision.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 252X)]

#### Norfolk Southern Railway Company— Abandonment Exemption—in Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA

On September 30, 2004, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 33.8-mile line of railroad between milepost N-134.10 near Burkeville and milepost 167.90 near Pamplin City, in Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA. The line traverses United States Postal Service Zip Codes 23040, 23901, 23909, 23922, 23958, 23960, and 23966. The line includes the stations of Rice, Farmville, and Prospect. Service will continue to the stations of Burkeville and Pamplin.

The line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 18, 2005.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).<sup>1</sup>

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 9, 2004. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).

<sup>1</sup> Effective October 31, 2004, the filing fee for an OFA will increase to \$1,200. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

All filings in response to this notice must refer to STB Docket No. AB-290 (Sub-No. 252X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001; and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510. Replies to the petition are due on or before November 9, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: October 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 04-23447 Filed 10-19-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Presidential Determination Concerning Libya and Delegation of Authority to the Secretary of the Treasury; Report of the Secretary of the Treasury to the Congress

**AGENCY:** Departmental Offices, Treasury.  
**ACTION:** Notice.

**DATES:** Presidential Determination 2004-48 was issued September 20, 2004. The report of the Secretary of the Treasury to the Congress was issued October 6, 2004.

**SUMMARY:** On September 20, 2004, the President issued Presidential Determination 2004-48. In Presidential

Determination 2004–48, the President determined that a waiver of the application of section 901(j)(1) of the Internal Revenue Code with respect to Libya is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in Libya and declared that he intended to grant such a waiver with respect to Libya. The President authorized and directed the Secretary of the Treasury to report to Congress in accordance with section 901(j)(5)(B) the President's intention to grant the waiver and the reason for the determination. The Secretary of the Treasury issued the required report to the Congress on October 6, 2004.

**SUPPLEMENTARY INFORMATION:** The text of Presidential Determination 2004–48 and the text of the report of the Secretary of the Treasury are printed below.

Dated: October 15, 2004.

**Richard S. Carro,**

*Senior Advisor to the General Counsel,  
(Regulatory Affairs).*

**Text of Presidential Determination No. 2004–48**

The White House, Washington,  
September 20, 2004.  
Presidential Determination, No. 2004–48.

Memorandum for the Secretary of the Treasury.

Subject: Intention to Grant Waiver of the Application of Section 901(j) of the Internal Revenue Code with Respect to Libya.

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 901(j)(5) of the Internal Revenue Code (the "Code") and section 301 of title 3, United States Code:

(a) I hereby determine that the waiver of the application of section 901(j)(1) of the Code with respect to Libya is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in Libya;

(b) I intend to grant such a waiver with respect to Libya; and

(c) I authorize and direct you to report to the Congress in accordance with section 901(j)(5)(B) of the Code my intention to grant the waiver and the reason for this determination and to arrange for publication of this determination in the **Federal Register**.  
George W. Bush.

**Text of the Report of the Secretary of the Treasury (Issued October 6, 2004)**

Report to the Congress Pursuant to Section 901(j)(5)(B) of the Internal Revenue Code

Section 901 of the Internal Revenue Code generally permits a U.S. taxpayer to take a credit against U.S. income tax for taxes paid to a foreign country. The foreign tax credit is subject to various limitations and restrictions under section 901.

Section 901(j)(1) imposes restrictions on the foreign tax credit in the case of income and taxes attributable to certain countries, including Libya. Section 901(j)(1) generally provides that taxes paid on income from countries described in section 901(j)(2)(A) cannot be taken into account in computing a U.S. taxpayer's foreign tax credit and that the income from such countries is subject to specific tax rules.

Section 901(j)(5) authorizes the President to waive the restrictions of section 901(j)(1) if the President determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in such country. Not less than 30 days before the date on which a waiver is granted, the President must report to Congress the intention to grant such a waiver.

The President has determined that a waiver of the application of section 901(j)(1) with respect to Libya is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in Libya. The President therefore stated his intention to grant such a waiver with respect to Libya. The President also authorized and directed the Secretary of the Treasury to report to Congress the President's intention to grant the waiver.

The granting of such a waiver is in the national interest of the United States. In light of recent actions taken by the Government of Libya, including commitments and actions to eliminate its weapons of mass destruction programs and its Missile Technology Control Regime (MTCR)-class missiles, it is in the national interest of the United States to uphold the President's commitment to respond in good faith by strengthening economic ties between the United States and Libya as one facet in the gradual normalization of U.S.-Libyan relations. The restrictions imposed by section 901(j) currently inhibit the development of such economic ties, and waiver of the restrictions of section 901(j)(1) will contribute to better and stronger commercial relations between the United States and Libya.

The granting of such a waiver will also expand trade and investment opportunities for U.S. companies in

Libya. Upon grant of the waiver, U.S. companies will be better able to compete with companies based in other countries in selling goods and providing services to Libyan companies and consumers. With the restrictions of section 901(j) of the Code removed, U.S. companies will be in a better position to create U.S. jobs through exports to and investments in Libya.

[FR Doc. 04–23563 Filed 10–19–04; 8:45 am]

**BILLING CODE 4810–25–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 5307**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans.

**DATES:** Written comments should be received on or before December 20, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Paul H. Finger, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [RJoseph.Durbala@irs.gov](mailto:RJoseph.Durbala@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans.

*OMB Number:* 1545–0200.

*Form Number:* 5307.

*Abstract:* Employers whose pension plans meet the requirements of Internal Revenue Code section 401(a) are permitted a deduction for their contributions to these plans. To have a plan qualified under Code section

401(a), the employer must submit an application to the IRS as required by regulation § 1.401-1(b)(2). Form 5307 is used as an application for this purpose by adopters of master or prototype or volume submitter plans.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Respondent:* 51 hours, 9 minutes.

*Estimated Total Annual Burden Hours:* 5,115,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2004.

**Paul H. Finger,**

*IRS Reports Clearance Officer.*

[FR Doc. 04-23483 Filed 10-19-04; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Wednesday,  
October 20, 2004**

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## **Part II**

# **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 93**

**Proposed Reservation System for  
Unscheduled Arrivals at Chicago's O'Hare  
International Airport; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 93**

[Docket No. FAA-2004-19411; Special Federal Aviation Regulation (SFAR) No. 105]

RIN 2120-AI47

**Proposed Reservation System for  
Unscheduled Arrivals at Chicago's  
O'Hare International Airport**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to implement a reservation system restricting the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the hours of 7 a.m. through 8:59 p.m., Central Time, beginning November 1, 2004, and continuing through April 30, 2005. This action is necessary to ensure the effectiveness of the Administrator's Order issued August 18, 2004, which limited scheduled arrivals over the same hours and effective dates.

**DATES:** Send your comments on or before November 1, 2004.

**ADDRESSES:** You may send comments [identified by Docket Number FAA-2004-19411] using any of the following methods:

- *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 20590-001.
- *Fax:* 1-202-493-2251.
- *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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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

**FOR FURTHER INFORMATION CONTACT:** Gerry Shakley, System Operations Services, Air Traffic Organization; telephone (202) 267-9424; facsimile (202) 267-7277; e-mail [gerry.shakley@faa.gov](mailto:gerry.shakley@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

*Privacy Act:* Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments

a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

**Authority**

The U.S. Government has exclusive sovereignty over the airspace of the United States.<sup>1</sup> Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the nation's navigable airspace. In this regard, the Administrator is required to assign by regulation or order use of the airspace to ensure its efficient use.<sup>2</sup> The Administrator may modify or revoke an assignment when required in the public interest.<sup>3</sup>

The FAA's broad statutory authority to manage "the efficient use of airspace" encompasses management of the nationwide system of air commerce and air traffic control. On a daily basis, that system transports millions of passengers, thousands of tons of cargo and often millions of pieces of mail. Ensuring the efficient use of the airspace means that the FAA must take all necessary steps to prevent congestion at an airport from disrupting or adversely affecting the overall air traffic system for which the FAA is responsible. Inordinate delays of the sort experienced at O'Hare in recent months can have a crippling effect on other parts of the system, causing untold losses in time and money for individuals and businesses, as well as the air carriers and other operators at O'Hare and beyond.

<sup>1</sup> 49 U.S.C. 40103(a).

<sup>2</sup> 49 U.S.C. 40103(b)(1).

<sup>3</sup> *Id.*

In 1968, under this statutory authority, the FAA designated O'Hare as a High Density Traffic Airport (HDR airport) and through the High Density Rule limited the number of takeoffs and landings at O'Hare, effective April 27, 1969.<sup>4</sup> The FAA required operators at each HDR airport including O'Hare to obtain a reservation for each instrument flight rules takeoff or landing.<sup>5</sup> The rules related to HDR airports remained in effect at O'Hare for over three decades. Near the end of that period, the FAA limited O'Hare's scheduled peak-hour air carrier and commuter operations (including both arrivals and departures) to 145 per hour, with ten additional reservations available for the "other" category of unscheduled operations.<sup>6</sup>

Each reservation for an unscheduled operation at an HDR airport is good for a one time arrival or departure flight on a specific date within a specific 30- or 60-minute time. Advisory Circular 93-1, "Reservations for Unscheduled Operations at High Density Traffic Airports," describes the procedures for obtaining a reservation. The FAA uses similar procedures for Special Traffic Management Programs implemented to respond to temporary increases in airport demand caused by special events such as major conventions or sporting events. Aircraft operators are therefore familiar with the general procedures the FAA is now proposing to reinstitute at O'Hare.

### Background

In 2003, O'Hare accommodated 928,691 flight operations, which made it the busiest airport in the world in terms of aircraft arrivals and departures. According to the FAA's Air Traffic Operations Network, which collects data on air traffic activity counts, during the first 6 months of 2004, 490,987 flights arrived at and departed O'Hare. From January through July 2004, total airport operations at O'Hare increased approximately 8.7% over the same period in 2003. The total number of enplaned passengers at O'Hare in 2003—at 30,797,513—ranked second in the U.S.<sup>7</sup>

According to flight delay information compiled by the Department's Bureau of Transportation Statistics, system

performance suffered at O'Hare as air carriers increased scheduled operations.<sup>8</sup> In November 2003, O'Hare ranked last among the 31 major airports reported for on-time arrival performance, delivering on-time arrivals just 57.26% of the time.<sup>9</sup> O'Hare also ranked last in on-time departures during November 2003, yielding on-time departures 66.94% of the time.<sup>10</sup> The Bureau of Transportation Statistics' data for December 2003 reflected a similarly discouraging performance by O'Hare during that month—ranked last with 60.06% of arrivals on time and 67.23% of departures on time.<sup>11</sup> FAA statistical analyses showed that at least part of the decline in on-time performance could be attributed to a scheduled volume of air traffic that exceeded the available airport capacity. Despite the high proportion of delayed flights, however, when the air carriers published their January and February 2004 schedules in the Official Airline Guide, they revealed their intention to add still more operations to the encumbered O'Hare schedule.

The Bureau of Transportation Statistics' data on flight delays and on-time performance for June 2004 reflect only modest overall improvement at O'Hare as a result of voluntary reductions in operations by two of the largest operators at O'Hare,<sup>12</sup> while problems associated with congestion persisted, particularly in the late afternoon and early evening when on-time performance is at its lowest.

Highlighting the FAA's concern, the industry's published schedules for November, as reported in the Official Airline Guide in late July 2004, revealed that the number of scheduled arrivals during several hours approaches or exceeds the airport's highest possible

arrival capacity. During one hour of the day, the number of scheduled arrivals actually would have exceeded the airport's capacity under ideal conditions by 32%, had these schedules taken effect, virtually ensuring daily delays even when the weather and airport operating conditions were optimal and contributing to potential gridlock when they were not.

On August 18, 2004, following a schedule reduction meeting conducted under the authority of 49 U.S.C. 41722, the FAA Administrator issued an order embodying the terms of air carrier agreements with the FAA that temporarily limited the number of scheduled arrivals during certain peak hours at O'Hare. The terms of Section 41722 permitted discussions only with scheduled air carriers and not other operators. The scheduling reduction meeting, the resulting agreements and the implementing order all reflected serious concerns over the persistent over scheduling of flights at the airport. The order was intended to relieve the substantial inconvenience to the traveling public caused by flight delays and congestion at that airport, which spread through the national airspace system. Among other things, the order limits the number of scheduled arrivals to 88 per hour, with certain exceptions.

In arriving at the limit of 88 arrivals for scheduled operations in the August 18 Order, the FAA assumed that the airport would accommodate four additional unscheduled arrivals per hour. (See FAA Order Limiting Scheduled Operations at O'Hare International Airport, dated August 18, 2004, page 12, included in the Docket No. FAA-2004-16944.) This assumption was based on historical experience; based on an analysis of peak period weekday arrivals at O'Hare during approximately six and a half months, the FAA determined that there was an average of 4 unscheduled arrivals during peak hours. The FAA also reviewed the annual daily average for air carrier and commuter aircraft, which are primarily scheduled flights, and general aviation and military flights (unscheduled) for calendar years 2000-2003 and for January through mid-July, 2004. Although the number of scheduled flights rose during those periods, the level of unscheduled flights remained stable over the study period and actually declined slightly from 2000 levels.

The FAA is, therefore, seeking to implement a reservation system for unscheduled arrivals limiting the number of such arrivals to four per hour between the hours of 7 a.m. and 9 p.m. Central Time beginning November 1,

<sup>4</sup> 33 FR 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K.

<sup>5</sup> See, e.g., 14 CFR 93.125 (2004).

<sup>6</sup> 14 CFR 93.123(a)(2004). The "Other" class of users includes general aviation, charter, military, public aircraft, and other irregular operations by commercial air carriers.

<sup>7</sup> National Transportation Statistics 2003, Table 1-41—Passengers Boarded at Top 50 U.S. Airports (Bureau of Transp. Statistics Mar. 2004).

<sup>8</sup> The U.S. Department of Transportation considers a flight to be on time if it arrives or departs no later than 15 minutes after its scheduled arrival or departure time. Arrival performance is based on arrival at the gate. Departure performance is based on departure from the gate.

<sup>9</sup> Airline On-time Tables—Nov. 2003, Table 3—Ranking of Major Airport On-time Arrival Performance in Nov. 2003 (Bureau of Transp. Statistics).

<sup>10</sup> Airline On-time Tables—Nov. 2003, Table 5—Ranking of Major Airport On-time Departure Performance in Nov. 2003 (Bureau of Transp. Statistics).

<sup>11</sup> Airline On-time Tables—Dec. 2003, Table 3—Ranking of Major Airport On-time Arrival Performance in Dec. 2003 & Table 5—Ranking of Major Airport On-time Departure Performance in Dec. 2003 (Bureau of Transp. Statistics).

<sup>12</sup> By FAA Orders dated January 21, 2004, and April 21, 2004, American Airlines and United Airlines each agreed to reduce scheduled operations during identified peak hours. These Orders responded to record delay levels at the airport since November 2003, primarily due to increases in flights and compression of schedules by the two largest operators at the airport.

2004, and continuing through April 30, 2005. This action would ensure that the demand for such operations is spread reasonably throughout the day and allow the FAA to achieve the overall established operational target for scheduled and unscheduled arrival flights. Consistent with limitations on scheduled flights, the FAA would allocate the arrival slot reservations in half-hour increments; no more than two arrival reservations in a half-hour period would generally be available for unscheduled arrivals. This may result in some operators shifting certain planned flights to another time with an available reservation, or potentially operating during unrestricted hours.

Under certain weather conditions and runway configurations, O'Hare has capacity to accommodate more than 92 arrivals per hour without causing delay. Although scheduled airlines cannot readily adjust their number of arrivals to take advantage of temporary fluctuations in the airport's capacity, unscheduled operators frequently can do so given the nature of their operations. Therefore, the FAA expects that additional reservations, which would be allocated using the same procedures as those outlined above, would be made available for last-minute unscheduled flight arrivals and other operating adjustments. The FAA will closely monitor weekend operations and other periods when lower volumes of scheduled arrivals would allow allocation of additional reservations for unscheduled flights.

Each reservation would be allocated on a 30-minute basis during the peak hours during which the restrictions are in place. The FAA's Airport Reservation Office (ARO) would receive and process all reservations requests. The reservations would be allocated on a first-come, first-served basis, determined by the time the request is received by the ARO. Operators can obtain a reservation: (1) Through the Internet; (2) by calling the ARO's interactive computer system via touch-tone telephone; or (3) by calling the ARO directly. Operators would provide the date/time of proposed operation and other identifying information concerning the aircraft and the intended flight. This process will also allocate the additional reservations that may be accommodated during periods of favorable weather and capacity conditions.

The allocation mechanism for unscheduled operations proposed in this SFAR is similar to the procedures currently used to allocate slots for the "Other" category for airports subject to the provisions of the High Density Rule

("HDR") (14 CFR part 93, subparts K and S.) (The limits of the HDR apply to New York's LaGuardia and John F. Kennedy International Airports and Washington's Reagan National Airport.) The proposed procedures are also similar to those used by unscheduled aircraft operators during Special Traffic Management Program implemented by Air Traffic Organization during periods of abnormally high traffic demand due to special events such as the Indianapolis 500, Kentucky Derby, fly-ins, and other circumstances.

Allocation of a reservation does not constitute an ATC clearance nor does it obviate the need to file an IFR flight plan. The FAA will accommodate declared emergencies without regard to reservations. Non-emergency flights in support of national security, law enforcement, or similar requirements may be accommodated above the reservation limits with the prior approval of the FAA. The proposed text of the SFAR contains detailed instructions for requesting reservations via the Internet, telephone, or alternatively contacting the ARO. Reservations for regularly scheduled operations are authorized separately under the terms of Federal Aviation Administration (FAA) Order "Operating Limitations at Chicago O'Hare International Airport" issued August 18, 2004. The procedures described in this SFAR would not be used for scheduled flights.

#### **Paperwork Reduction Act**

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for an emergency clearance.

*Title:* SFAR No. 105, Operating Limitations for Unscheduled Arrivals at Chicago's O'Hare International Airport.

*Summary:* This proposal requires persons conducting unscheduled operations at O'Hare to obtain an arrival reservation for that operation from the FAA's Airport Reservation Office.

*Use of:* This proposal would support the information needs of the FAA Air Traffic Organization in temporarily limiting unscheduled operations at O'Hare.

*Respondents (including number of):* The likely respondents to this proposed information requirement are persons conducting general aviation operations, charter operations, military operations and other public aircraft operations that seek to operate at O'Hare FAA analysis

indicates there may be as many as 11 operators requesting reservations for unscheduled operations throughout the entire day. However, for any given hour between 7 a.m. and 8:59 p.m. the unscheduled demand from January 2004 through July 2004, showed the average number of unscheduled operations peaked at 5.4 arrivals on Thursdays at 6 p.m. The hourly average for unscheduled operations was 4 arrivals per hour. For purposes of this NPRM we are estimating the number of respondents to be up to 200.

*Frequency:* FAA has determined there would be 56 arrival reservation requests, given the average of 4 unscheduled arrivals per hour at O'Hare for each of the 14 reservation hours per day. The reservation hours begin at 7 a.m. and end at 9 p.m., Central Time.

*Annual Burden Estimate:* FAA estimates it will take 2 minutes to make each reservation. For the 6-month period—November 1, 2004, through April 2005, for which the proposal would be in effect, the information collection burden would be 20, 384 minutes (340 hours) to place reservations for unscheduled arrivals between the hours of 7 a.m. to 8:59 p.m. at O'Hare. On an annual basis, operators will require 40, 768 additional minutes (777 hours) to place reservations for unscheduled arrivals.

Since the reservations could be made using touch-tone telephone interface, an Internet Web interface using electronic information technology, automated telephone systems and calls directly to ARO, FAA does not expect the unscheduled reservations to require new capital or equipment. These electronic systems are already in place for other categories of operations for unscheduled flights under Special Traffic Management Programs, and the O'Hare Arrival Reservation Program.

The estimate of cost resulting from the collection of information to implement this proposal does consider the additional labor costs for operators to place reservations for unscheduled arrivals. The pilots of the unscheduled flights such as general aviation, charter operators and businesses perform many non-flying duties, which include record keeping and scheduling. FAA has used a burden labor rate of \$43 per hour, which is based on annual earnings data for airline pilots, co-pilots, and flight engineers, and commercial pilots for unscheduled air transportation provided in the Bureau of Labor Statistics' Occupational Employment Statistics series.

For the 6-month period—November 1, 2004 through April 2005, for which the proposal would be in effect, the

information collection burden would be 20,384 minutes (340 hours) to place reservations for unscheduled arrivals between the hours of 7 a.m. to 8:59 p.m. at O'Hare. On an annual basis, operators will require 40,768 additional minutes (777 hours) to place reservations for unscheduled arrivals. At the burdened labor rate of \$43 per hour, the total annual cost burden will be \$29,223. FAA believes these costs will be a minimal burden to the respondents or record keepers making the reservations for unscheduled flights.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. Since the reservation system proposed in this document would take effect November 1 of this year, the FAA will seek emergency clearance of this information collection. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

#### **International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

#### **Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, "Regulatory Planning and Review," dated September 30, 1993 (58 FR 51736), directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this rulemaking indicates that its economic impact is minimal because of the flexibility of unscheduled operators to take advantage of the dynamic capacity at O'Hare. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory Policies and Procedures. We do not

need to do a full evaluation where the economic impact of a rule is minimal.

#### **Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation.)

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it be included in the preamble and a full regulatory evaluation cost benefit evaluation need not be prepared.

Under this notice, the FAA proposes to place limits on unscheduled arrivals at O'Hare International Airport to accompany the flight limits of scheduled flights, which will go into effect on November 1, 2004. Consistent with the FAA O'Hare Order issued on August 18, 2004, FAA defines the unscheduled flights as those flights that are not published in the Official Airline Guide (OAG). Unscheduled arrival operations also do not include operations regularly conducted by air carrier or commuter between O'Hare and another service point. FAA has used the OAG to determine the scheduled flights. Hence, unscheduled flights include general aviation, military flights, air taxi and other flights such as

some freight, ferry, and charter flights that are not listed in the OAG. Further, this proposal does not include helicopter operations and flights by foreign air carriers, except those flights conducted by Canadian air carriers.

For a variety of reasons the proposed rule limiting unscheduled flights at O'Hare should have minimal economic impact. The proposed rule establishes flight limits that match the actual average number of unscheduled operations at O'Hare. For the 7-month period preceding the FAA order for scheduled operations, January 4–July 24, the hourly average by day of week range from 2.7 to 4.0 flights. Moreover, during the hours the reservation system is in effect, operators have alternatives and can vary arrival times or land at another airport in the Chicago area.

Additionally, during periods of favorable weather and operating conditions, the airport has capacity to accommodate additional arrivals and the FAA plans to make additional arrival reservations available, provided doing so will not significantly increase delays. Due to the nature of their operations, unscheduled operators are able to take advantage of this dynamically available capacity.

The operators of unscheduled flights have considerably more discretion and flexibility than scheduled operators in terms of the flight planning horizon and arrival time. FAA thus expects these unscheduled flights can easily be accommodated. This is especially the case for general aviation and military flights, which make up the majority of the unscheduled flights. The flight plan for general aviation and military flights are usually filed the last 1 to 3 hours before operations. Further, there are multiple airports within close proximity to O'Hare.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic

impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

FAA expects that there would be more than two entities affected by the proposed rule. However, the economic effect will be minimal. The operators of unscheduled flights have considerably more discretion and flexibility than scheduled operators in terms of the flight planning horizon and arrival time. The FAA believes the operators will have substantial viable alternatives. This can include varying the arrival time and day, or landing at another airport in the Chicago area.

Consequently, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

#### Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would not have an effect on foreign commerce.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a

“significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

#### Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

#### Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

#### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping requirements.

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

#### PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

1. The authority citation for part 93 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Special Federal Aviation Regulation No. \_\_\_\_, Operating Limitations for Unscheduled Operations at Chicago's International Airport is added to read as follows:

Section 1. *Applicability.* This Special Federal Aviation Regulation (SFAR) No. \_\_\_\_ applies to persons conducting unscheduled operations under instrument flight rules (IFR) and visual flight rules (VFR) to Chicago's O'Hare International Airport (O'Hare) during the hours of 7 a.m. through 8:59 p.m., Central Time. This SFAR does not apply to helicopter operations and flights by foreign air carriers, except those flights conducted by Canadian air carriers.

Section 2. *Operational Limits.* Except as provided for in section 6 below, unscheduled IFR and VFR flights to O'Hare are limited to 4 arrival reservations per hour and no more than 2 arrival reservations during each half-hour, for the peak hours described in section 1.

Section 3. *Reservation Requirement.* Each person conducting an unscheduled IFR or VFR flight to O'Hare during the peak hours described in section 1 must obtain for such flight operation an arrival reservation allocated by the Airport Reservation Office. In addition to obtaining a reservation as described in this SFAR, it is the separate responsibility of the pilot/operator to comply with all NOTAMs, security or other regulatory requirements to operate at O'Hare.

Section 4. *Terms.* For purposes of this SFAR:

“Additional Reservation” is an approved reservation above the established limit. Additional reservations are available for unscheduled operations only and are allocated in accordance with the procedures described in section 6 of this SFAR.

“Airport Reservation Office (ARO)” is an operational unit of the FAA Air Traffic Control System Command Center that is responsible for administration of reservations for the “other” category of operations *i.e.* unscheduled flights at High Density Traffic Airports (14 Code of Federal Regulations, part 93, subpart k), reservations for unscheduled flights under Special Traffic Management Programs, and the O'Hare Arrival Reservation Program.

“Enhanced Computer Voice Reservation System (e-CVRS)” is the system used by the FAA to make arrival and/or departure reservations at designated airports requiring reservations. There is a touch-tone telephone interface, an Internet Web interface, and the ability to call the ARO directly for making reservations.

“Reservation” is an authorization received in compliance with applicable Notices to Airmen (NOTAMs) and procedures established by the FAA Administrator to operate an unscheduled arrival flight to O’Hare. A reservation for O’Hare is allocated on a 30-minute basis beginning at 7 a.m. and continuing through 8:59 p.m. Central Time. A reservation authorizes a planned arrival only within the approved time period, unless the flight encounters an air traffic control (ATC) traffic delay. Reservations are required for flights operating under IFR and VFR.

“Unscheduled Operation” is an operation other than one regularly conducted by an air carrier or commuter between O’Hare and another service point. However, certain types of air carrier and commuter operations are also considered for these purposes of this definition as unscheduled, including irregular charter, hired aircraft service, ferry flights, and other non-passenger flights.

#### Section 5. *Reservation Procedures.*

a. The FAA’s ARO will receive and process all reservation requests for unscheduled arrivals at O’Hare during the effective period. Reservations are allocated on a “first-come-first-served” basis determined by the time the request is received at the reservation office. Standby lists are not maintained. Users may access the computer reservation system using a touch-tone telephone, via the Internet, or by telephoning the ARO directly. Requests for reservations will be accepted beginning 72 hours prior to the proposed time of arrival at O’Hare. For example, a request for an 11 a.m. reservation on a Thursday will be accepted beginning at 11 a.m. on the previous Monday.

b. A maximum of two transactions per telephone call/Internet session will be accepted.

c. The ARO will allocate reservations on a 30-minute basis, e.g., an approved reservation for 1900 UTC covers a planned airport arrival any time from 1900 through 1929 UTC.

d. A reservation does not ensure against traffic delays nor does it guarantee arrival within such allotted time. A reservation also is not an ATC clearance. Aircraft specifically delayed by ATC traffic management initiatives are not required to obtain a new reservation based on the revised arrival time.

e. Users must check current NOTAMs in effect for the airport. A reservation from e-CVRS does not constitute permission to operate if additional operational limits or procedures are required by NOTAM and/or regulation.

f. The filing of a request for a reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan must be filed only after the reservation is obtained and must be filed through normal channels. The ARO does not accept or process flight plans.

g. Users may obtain reservations by (1) accessing the Internet; (2) calling the ARO’s interactive computer system via touch-tone telephone; or (3) calling the ARO directly. The telephone number for the e-CVRS computer is 1-800-875-9694. This toll free number is valid for calls originating within the United States, Canada, and the Caribbean. Users outside those areas may access e-CVRS by calling the toll number of (703) 707-0568. The Internet Web address for accessing e-CVRS is <http://www.fly.faa.gov/ecvrs>. Users may contact the ARO at 703-904-4452 if they have a problem making a reservation using the automated interfaces, if they have a question concerning the procedures, or if they wish to make a telephone reservation from outside the United States, Canada, or the Caribbean. (**Note:** The inability to obtain a reservation because all the reservations have been allocated is not considered as having a problem making a reservation.)

h. When filing a request for an arrival reservation at O’Hare, the pilot must provide the following information:

(1) Date(s) and hour(s) (UTC) of proposed operation(s).  
 (2) Aircraft call sign, flight identification, or tail number(s). Operators using a 3-letter identifier and flight number for air traffic control (ATC) communication must obtain a reservation using that same information. Operators communicating with ATC using an aircraft tail number must obtain a reservation using the tail number.

(3) Aircraft type identifier.  
 (4) Origin airport (3-letter identifier) immediately prior to the proposed arrival at O’Hare.

Should the requested time not be available, the user will be offered the closest available time before and after the requested time. If an alternate time is accepted, this will be the reservation.

i. Users must advise the ARO whenever a change is needed to an allocated reservation. Changes must be made to e-CVRS reservations by using the telephone interface, the Internet Web interface, or by calling the ARO.

j. A reservation must be cancelled when a user knows that it will not be used. Cancellations must be made through e-CVRS as soon as practical using the telephone interface, the

Internet Web interface, or by calling the ARO. Early cancellation of reservation will provide opportunities for other operators to use the limited number of airport reservations.

1. The following information is needed to change or cancel a reservation:

(1) Aircraft 3-letter identifier and flight number or tail number, depending on what information was provided for the original reservation.

(2) Airport for which the reservation was made.

(3) Date and Time (UTC) of reservation.

(4) Reservation number.

#### Section 6. *Additional Reservations.*

a. Notwithstanding the restrictions in section 1, if in the judgment of the Air Traffic Organization, ATC weather and capacity conditions are favorable and significant delay is not likely at O’Hare or in the national airspace system as a result of O’Hare-related operations, the Air Traffic Control System Command Center may in its sole discretion determine that additional reservations may be accommodated for a specific time period. Generally, the availability of additional reservations will not be determined more than 8 hours in advance. If available, additional reservations will be added to e-CVRS and granted on a first-come-first-served basis using the procedures described in section 5 of this SFAR. Reservations for arrival operations are not granted by the local ATC facility and must be obtained through e-CVRS/ARO.

b. An operator who has been unable to obtain a reservation at the beginning of the 72-hour window may find that a reservation may be available on the scheduled day of operation due to additional reservations or cancellations.

c. ATC will accommodate declared emergencies without regard to reservations. Non-emergency flights in support of national security, law enforcement, or similar requirements may be accommodated above the reservation limits with the prior approval of the FAA Vice President, System Operations Services.

#### Section 7. *Making Arrival Reservations at O’Hare Using e-CVRS.*

a. Telephone users. When using a touch-tone telephone to make a reservation, you are prompted for a response. All input is accomplished using the keypad on the telephone. One issue with a touch-tone telephone entry is that most keys have a letter and number associated with them. When the system asks for a date or time, it is expecting an input of numbers. A problem arises when entering a tail number, or 3-letter identifier. The

system does not detect if you are entering a letter (alpha character) or a number. Therefore, when entering an aircraft identifier and flight number or aircraft registration/tail number two keys are used to represent each letter or number. When entering a number, precede the number you wish by the number 0 (zero) *i.e.*, 01, 02, 03, 04, \* \* \* If you wish to enter a letter, first press the key on which the letter appears and then press 1, 2, or 3, depending upon whether the letter you desire is the first, second, or third letter on that key. For example to enter the letter "N" first press the "6" key

because "N" is on that key, then press the "2" key because the letter "N" is the second letter on the "6" key. Since there are no keys for the letters "Q" and "Z," e-CVRS pretends they are on the number "1" key. Therefore, to enter the letter "Q," press 11, and to enter the letter "Z," press 12.

**Note:** Users are reminded to enter the "N" character with their tail numbers (see Table 1). Operators using a 3-letter identifier and flight number to communicate with ATC facilities should enter that call sign when making their reservation.

TABLE 1.—CODES FOR CALL SIGN/ TAIL NUMBER INPUT

[Codes for call sign/tail number input only]

A-21 .....	J-51 .....	S-73 .....	1-01
B-22 .....	K-52 .....	T-81 .....	2-02
C-23 .....	L-53 .....	U-82 .....	3-03
D-31 .....	M-61 .....	V-83 .....	4-04
E-32 .....	N-62 .....	W-91 .....	5-05
F-33 .....	O-63 .....	X-92 .....	6-06
G-41 .....	P-71 .....	Y-93 .....	7-07
H-42 .....	Q-11 .....	Z-12 .....	8-08
I-43 .....	R-72 .....	0-00 .....	9-09

b. Additional helpful key entries: (See Table 2).

TABLE 2.—HELPFUL KEY ENTRIES

# .....	After entering a call sign/tail number, depressing the "pound key" (#) twice will indicate the end of the tail number.
* 2 .....	Will take the user back to the start of the process.
* 3 .....	Will repeat the call sign/tail number used in a previous reservation.
* 5 .....	Will repeat the previous question.
* 8 .....	Tutorial Mode: In the tutorial mode each prompt for input includes a more detailed description of what is expected as input. * 8 are a toggle on/off switch. If you are in tutorial mode and enter * 8, you will return to the normal mode.
* 0 .....	Expert Mode: In the expert mode each prompt for input is brief with little or no explanation. Expert mode is also on/off toggle.

c. Internet Web Based Interface. The e-CVRS reservation system includes a Web-based interface. The Internet option provides a fast, user-friendly environment for making reservations. The Internet address is <http://www.fly.faa.gov/ecvrs>. Flight information may be added or edited using e-CVRS after the reservation is initially obtained.

All users of e-CVRS must complete a one-time registration form containing

the following information: full name; e-mail address; a personal password; password confirmation; and company affiliation (optional). Your e-mail and password are required each time you log in to use e-CVRS. Instructions are provided on each page to guide you through the reservation process. If you need help at any time, you can access page-specific help by clicking the question mark "?" located in the upper right corner of the page.

Issued in Washington, DC, on October 15, 2004.

**Linda M. Schuessler,**  
*Vice President, System Operations Services,*  
*Federal Aviation Administration.*

[FR Doc. 04-23539 Filed 10-18-04; 10:08 am]

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# Federal Register

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**Wednesday,  
October 20, 2004**

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**Part III**

**Agency for  
International  
Development**

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**22 CFR Parts 202, 205, 211, and 226**

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**Participation by Religious Organizations  
in USAID Programs; Final Rule**

**AGENCY FOR INTERNATIONAL DEVELOPMENT****22 CFR Parts 202, 205, 211, and 226****RIN 0412-AA52****Participation by Religious Organizations in USAID Programs****AGENCY:** Agency for International Development (USAID).**ACTION:** Final rule.

**SUMMARY:** This final rule implements Executive Branch policy that, within the framework of constitutional guidelines, religious (or “faith-based”) organizations should be able to compete on an equal footing with other organizations for USAID funding. This final rule revises USAID regulations pertaining to grants, cooperative agreements and contracts awarded for the purpose of administering grant programs to ensure their compliance with this policy and to clarify that faith-based organizations are eligible to participate in programs on the same basis as any other organization, with respect to programs for which such other organizations are eligible.

**EFFECTIVE DATE:** October 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Linda Shovlain, Acting Director, Center for Faith-Based and Community Initiatives, USAID, Rm. 3.9.031, 1300 Pennsylvania Ave., NW., Washington, DC 20523; telephone: (202) 712-4080 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On June 7, 2004, the Agency for International Development published in the **Federal Register** (69 FR 31773) notice of a proposed rule to implement, in part, Executive Order 13280, published in the **Federal Register** on December 16, 2002 (67 FR 77145), and Executive Order 13279, published in the **Federal Register** on December 16, 2002 (67 FR 77141). As more fully explained below, these orders, among other things, directed the Agency for International Development to end discriminatory treatment of religious or “faith-based” organizations in the administration of Agency grants and programs. The Agency provided a 60-day comment period on the proposed rule, which ended on August 6, 2004. The Agency also offered the public the opportunity to submit comments by surface mail, e-mail or fax.

**I. Background**

Religious (or “faith-based”) organizations make an important contribution to the delivery of humanitarian and economic assistance

in much of the world. Faith-based organizations acting alone or in partnership with local and national governments, community-based organizations, institutions of higher education, and other private organizations do much good work to meet the pressing needs of countries and their citizens, consistent with the objectives of the U.S. foreign assistance program.

Faith-based non-profit organizations have been implementing humanitarian and development activities for USAID for decades. Nevertheless, this final rule seeks to further facilitate the contribution of faith-based and community organizations to increase the reach and effectiveness of its programs. We believe this rule will strengthen USAID’s overall efforts, given priority in the national security strategy of the United States, to respond to the humanitarian and economic development needs of countries world-wide.

President Bush has directed Federal agencies, including USAID, to take steps to ensure that Federal policy and programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. The Administration believes that such groups possess an under-appreciated ability to meet the needs of disadvantaged people overseas struggling to make a better life, recover from a disaster or live in a free and democratic country. The Administration believes that there should be an equal opportunity for all organizations—both religious and nonreligious—to participate as partners in Federal programs.

As part of these efforts, President Bush issued Executive Order 13198 on January 29, 2001. The Order, which was published in the **Federal Register** on January 31, 2001 (66 FR 8499), created Centers for Faith-Based and Community Initiatives in five Cabinet departments—Housing and Urban Development, Health and Human Services, Education, Labor, and Justice. The Executive Order charged the Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and community organizations in the provision of social services by their Departments. On December 12, 2002, President Bush issued Executive Order 13280. That Order, published in the **Federal Register** on December 16, 2002 (67 FR 77145), created Centers in two additional agencies—the United States Agency for International Development and the Department of Agriculture—and charged those Centers with duties

similar to those set forth in Executive Order 13198. On December 12, 2002, President Bush also issued Executive Order 13279, published in the **Federal Register** on December 16, 2002 (67 FR 77141). That Executive Order charges Executive Branch agencies to ensure equal protection of laws for faith-based and community groups that apply for funds to meet and administer social service programs domestically and abroad. President Bush called for an end to discrimination against faith-based organizations. He further directed that faith-based organizations be allowed to retain their religious autonomy over, among other things, their internal governance and composition of boards and over their display of religious art, icons, scriptures, or other religious symbols when participating in government-funded programs. President Bush directed each Executive Branch agency, including USAID, to implement these policies, in a manner consistent with the First Amendment to the United States Constitution. This rule fulfills in part USAID’s responsibilities under these Executive Orders. The rule is similar to rules adopted by other Executive Branch agencies charged with implementing the Faith-Based and Community Initiative Executive Orders described above.

**II. This Rule***A. Purpose of Rule*

Consistent with the President’s Initiative, this rule revises USAID’s regulations to ensure that there are no unwarranted barriers to the equal participation of faith-based organizations in USAID’s programs. The objective of the rule is to ensure that USAID’s programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding. In addition, this rule is designed to ensure that the implementation of USAID’s programs is conducted in a manner consistent with the requirements of the Constitution.

*B. USAID Regulations Amended by Rule*

This rule revises in its entirety 22 CFR part 205, Payments to and on Behalf of Participants in Nonmilitary Economic Development Training Programs. The new title is “Participation by Religious Organizations in USAID Programs.” This rule also amends the following USAID regulations:

1. 22 CFR part 202, Overseas Shipment of Supplies by Voluntary Non-Profit Relief Agencies.

2. 22 CFR part 211, Transfer of Commodities for Food Use in Disaster Relief, Economic Development, and Other Assistance.

3. 22 CFR part 226, Administration of Assistance Awards to U.S. Non-Government Organizations.

### C. Regulatory Amendments to Title 22

The revised part 205 applies to all Federal financial assistance (including grants, cooperative agreements and contracts that administer grant programs) awarded by USAID. Award documentation for such Federal financial assistance will include standard clauses that incorporate the requirements of part 205, and USAID internal directives will highlight, explain, and incorporate part 205 by reference. The rule also makes corresponding changes to existing parts 202, 211 and 226 of 22 CFR that relate to aspects of Federal financial assistance programs administered by USAID.

1. *Participation by religious organizations in USAID programs.* The rule makes clear that organizations are eligible to participate in USAID programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for USAID assistance awards or sub-awards simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government and intermediary organizations administering USAID funds are prohibited from discriminating for or against organizations on the basis of religious character or affiliation. Nothing in this rule, however, precludes those administering USAID funded programs from accommodating religious organizations in a manner consistent with the Religion Clauses of the First Amendment to the Constitution, as they have been interpreted to apply in the domestic context.

2. *Inherently religious activities.* The rule describes the requirements applicable to all recipient and sub-recipient organizations regarding the use of USAID funds for inherently religious activities. Specifically, a participating organization may not use direct financial assistance<sup>1</sup> from USAID

to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct USAID assistance, and participation must be voluntary for the beneficiaries of the USAID-funded programs or services. This requirement ensures that direct financial assistance from USAID to religious organizations is not used to support inherently religious activities. Such assistance may not be used, for example, to conduct worship services, prayer meetings or any other activity that is inherently religious.

This restriction does not mean that an organization that receives USAID funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct financial assistance from USAID. Thus, faith-based organizations that receive direct financial assistance from USAID must take steps to separate, in time or location, their inherently religious activities from the direct USAID-funded services that they offer.

In addition, the rule clarifies that the legal restrictions applicable to religious programs within correctional facilities will sometimes be different from the legal restrictions that apply to other USAID programs, on account of the fact that the degree of government control over correctional environments sometimes warrants affirmative steps by prison officials, in the form of chaplaincies and similar programs, to ensure that prisoners have access to opportunities to exercise their religion in the prison.

3. *Independence of religious organizations.* The rule clarifies that a religious organization that participates in USAID programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide USAID-funded services without removing religious art, icons, scriptures, or other religious

symbols. In addition, a USAID-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Use of USAID funds for acquisition, construction, or rehabilitation of structures.* The rule clarifies that USAID funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific USAID program. Where a structure is used for both eligible and inherently religious activities, the rule clarifies that USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities. Additionally, USAID funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other room that a religious congregation that is a recipient or sub-recipient of USAID assistance uses as its principal place of worship.

5. *Nondiscrimination in providing assistance.* The rule clarifies that USAID and any organization that receives direct financial assistance from USAID shall not, in providing program assistance, discriminate for or against a program beneficiary or potential program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services directly funded in whole or in part by USAID, may not discriminate for or against current or prospective program beneficiaries on the basis of religion or religious belief.

6. *Assurance requirements.* This rule directs the removal of those provisions of USAID's agreements, covenants, memoranda of understanding, policies, or regulations that require only USAID-funded religious organizations to provide assurances that they will not use monies or property for inherently religious activities. All organizations that participate in USAID programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in inherently religious activities. In addition, to the extent that provisions of USAID's agreements, covenants, policies, or regulations disqualify religious organizations from participating in USAID's programs because they are motivated or

<sup>1</sup> As used in this rule, the terms "direct USAID assistance" or "direct financial assistance from USAID" refers to direct funding within the meaning of the Establishment Clause of the First Amendment as it has been interpreted to apply in the domestic context. For example, direct USAID assistance may mean that the government or an intermediate organization with similar duties as a governmental

entity under a particular USAID program selects an organization and enters a grant relationship with the organization for provision of needed services. In contrast, many indirect funding scenarios place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

influenced by religious faith to provide social services, or because of their religious character or affiliation, the rule removes that restriction, which is not required by governing law.

7. *National Security/Foreign Policy Waiver.* The rule also permits the Secretary of State to waive all or any part of the rule, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

### III. Response to Comments Received on the Proposed Rule

The Agency received comments from a small number of individuals and non-governmental organizations, including national religious organizations, some of whom indicated a special interest in church/state issues. Most of the comments opposed allowing faith-based organizations to compete for government funds and/or believed greater restrictions should be placed on their receipt of funds. In contrast, one comment recommended that the restrictions on inherently religious activities be removed, in order to permit more effective assistance to religious organizations that provide social welfare services.

The following is a summary of comments by issue, and the Agency's responses to those comments.

#### *Participation of Religious Organizations in Government-Funded Programs*

*Comment:* Several commenters questioned whether the rule violates the Establishment Clause of the First Amendment to the U.S. Constitution. One commenter declared that the rule "anticipates the implementation of a patently unconstitutional grant of government money to pervasively sectarian institutions." Commenters were concerned with the potential promotion by government of particular religious groups or of religion in general; the likelihood that religious organizations would conform their religious practices and activities to the rule's requirements; and the general prospect of government entanglement with religion.

*USAID Response:* We disagree with the commenters. The regulations ensure that there is no direct USAID funding for inherently religious activities, consistent with current precedent involving domestic programs.<sup>2</sup>

<sup>2</sup> It is possible that a less stringent standard would apply to foreign assistance. Cf. *DK Memorial Fund v. AID*, 887 F.2d 275 (D.C. Cir. 1989). Given that this regulation satisfies the standards that apply in the domestic context, it follows *a fortiori* that it would also satisfy any less stringent standard.

Specifically, organizations receiving direct USAID funds must ensure that inherently religious activities are separate in time or location from USAID-funded services, and they must also ensure that participation in such religious activities is voluntary.

Furthermore, in programs supported by direct USAID funds, organizations are prohibited from discriminating for or against a program beneficiary on the basis of religion or religious belief.

In addition, the Supreme Court's "pervasively sectarian" doctrine—which held in the domestic context that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even "secular" tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell v. Helms*, 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case set forth reasoning that is inconsistent with its underlying premises, see *id.* at 857–858 (O'Connor, J., concurring in judgment, joined by Breyer, J.) (requiring proof of "actual diversion of public support to religious uses"). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the "pervasively sectarian" doctrine. We therefore believe that USAID may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character, in accordance with this rule.

The rule does not endorse religion in general or any particular religious view. In fact, the rule specifically prohibits discrimination "for or against an organization on the basis of the organization's religious character or affiliation." (emphasis added). Under the rule, all organizations, whether religious or non-religious, are eligible to apply and compete for USAID funding according to the same criteria. And it again merits emphasis that the rule forbids the use of direct government assistance for inherently religious activities and states that any such activity must be voluntary and separated, in time or location, from activities directly funded by USAID.

The limitation on the use of the direct funds is not meant to put an organization in the position of having to deny or alter its core religious perspectives on social issues or reject government funds for its activities that are otherwise consistent with the

purposes of USAID programs. We recognize that, while the government regards services like feeding the hungry and housing the poor as social services or secular work, some organizations may regard these same activities as acts of mercy, spiritual service, fulfillment of religious duty, good works, or the like. Nevertheless, as a general matter, an activity such as providing food for the hungry or shelter for the homeless would constitute an appropriate use of funds, as long as any inherently religious activities offered by the provider are separate in time or location, privately funded, and voluntary.

As to whether religious organizations will conform to the requirements of the regulations, as mentioned above, the Supreme Court has rejected the presumption that religious organizations will inevitably divert government funds and use them for their own religious purposes. USAID rejects the view that organizations with religious commitments cannot be trusted to fulfill their written promises to adhere to grant requirements.

Similarly, we do not agree that the rule poses a danger of excessive government entanglement with religion. The rule expressly provides that religious organization grantees will retain their independence, including with respect to religious symbols, selection of board members, and internal governance. Religious organizations receiving USAID funding will be subject to the same program eligibility and ex-post funding restrictions that apply to non-religious organization grantees. USAID will apply the same cost-accounting principles to all organizations. Because inherently religious activities are non-USAID activities, USAID need not distinguish between program participants' religious and nonreligious non-USAID activities; the same mechanism by which USAID polices the line between eligible and ineligible activities will serve to exclude inherently religious activities from funding. The amount of oversight of religious organizations necessary to accomplish these purposes is no greater than that involved in other publicly-funded programs that the Supreme Court has sustained.

Some organizations may be unable or unwilling to separate their inherently religious activities in time or location, as required. Those organizations would not qualify for direct funding by the Agency, but might be eligible for indirect funding.

*Comment:* One commenter advocated less stringent eligibility requirements for religious organizations' participation in

USAID programs. This commenter argued that, because many religious organizations “integrated” social and health-related services with spiritual activities, the prohibition on direct funding of “inherently religious activities” should be removed, waived or at least narrowed. The commenter advanced numerous arguments for this view, including the overall magnitude and urgency of the global HIV/AIDS crisis; the reported effectiveness of combining humanitarian and spiritual services; the lack of formal church-state separation requirements in many host countries; the adequacy of “coercion safeguards” in place of a flat prohibition on inherently religious activities; and the impracticalities of separating humanitarian and spiritual activities and funds of religious organizations.

*USAID Response:* The Agency agrees that religious organizations may contribute significantly to efforts to address global challenges such as HIV/AIDS. In addition, we recognize that some religious organizations have unique strengths and skills in providing comprehensive social and welfare services. For those and other reasons, this rule makes clear that religious organizations are eligible for Agency funding according to the same criteria as non-religious organizations. The rule prohibits direct funding of “inherently religious activities.” At the same time, the rule makes clear that a religious organization receiving USAID funds retains its independence, including the definition, practice, and expression of its religious beliefs. The Agency believes that the rule sets up appropriate parameters for the affected programs in light of current precedent’s interpretation of the constitutional provisions that govern expenditures of U.S. funds, particularly in light of the judicial precedents applicable in the domestic context.

#### *USAID-Funded Structures*

*Comment:* One commenter believed that nothing in the rule would prevent a faith-based organization from converting a USAID-funded portion of a structure for a prohibited religious use at some future date. Other commenters suggested that the rule require that the USAID-funded portions of a structure be used for secular purposes for the life of the building. It was also suggested that USAID establish procedures for recapturing the Federal assistance if the USAID-funded portion of the structure is ever used for a religious purpose. Finally, one commenter objected to phrasing in the proposed rule that would allow USAID and religious organizations to split the cost of

acquiring, constructing, or rehabilitating a facility, asserting that the line between religious and nonreligious activities is not clear and that this would result in unseemly negotiations about what constituted religious activity and intrusive USAID monitoring of religious organizations’ activities within dual use facilities.

*USAID Response:* In a neutral program in which the government directly funds the capital improvements of institutions that administer Federal social welfare programs, even in the domestic context the government need only put in place safeguards to ensure that public money is not used to finance inherently religious activities. The rule satisfies this standard by prohibiting the use of USAID funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. There is no need for any requirement prohibiting use of non-USAID-funded portions of buildings for inherently religious activities.

With respect to concerns about the funding of capital improvements for religious structures that are later converted to non-USAID uses, the rule states that the disposition of USAID-improved property after the term of grants to religious organizations, and changes in the use of property improved for use by religious organizations, are subject to government-wide regulations governing real property disposition. The Agency has promulgated regulations (see 22 CFR Part 226) that address the terms under which such grantees must use the property for eligible activities, and the terms under which Federally funded improvements must be “bought back” if such grantees decide to discontinue their involvement in the program.

We do not agree with comments that preventing the use of direct USAID capital-improvement funds for inherently religious activities would necessarily fail or, in the process, excessively entangle the government in the affairs of recipients or sub-recipients that are religious organizations. In addition, some monitoring is necessary to ensure that direct USAID funding is not used to support inherently religious activities. However, we do agree that the phrasing of the proposed rule would benefit from further clarification. Therefore, the final rule clarifies this requirement by stating that USAID funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of USAID

assistance uses as its principal place of worship.

#### *Time or Location Restrictions*

*Comment:* A commenter suggested that the rule’s “time or location” provision be tightened to require that religious organizations separate religious and any secular, government funded activities by both time and location. In a similar vein, other comments suggested that the time or location requirement be made specific to provide better guidance for compliance.

*USAID Response:* We decline to adopt either suggestion. As an initial matter, USAID does not believe that the requirement is ambiguous or necessitates additional regulation for proper adherence. Moreover, USAID believes that separation in both time and location is legally unnecessary and would impose an unnecessarily harsh burden on small religious organizations, which may have access to only one location that is suitable for the provision of the USAID-funded service(s). The rule is clear that, when an organization receives direct government assistance, any inherently religious activities that the organization offers must simply be offered separately—in time or place—from the activities supported by direct USAID funds. For example, an organization may receive direct USAID funding to distribute food in a needy community. This same organization may also host a privately-funded prayer meeting that it invites participants to attend. This privately-funded prayer meeting would need to be held either in a separate location or at a separate time from the food distribution. And it should be made clear that beneficiaries of the food distribution program should understand that whether they join the prayer meeting is up to them, and that their decision will have no bearing on whether they receive services.

#### *Display of Religious Art, Icons and Images*

*Comment:* One commenter stated that the rule fails to consider that the display of religious art, icons and images alone may create a “pervasively sectarian atmosphere” which could deter intended program beneficiaries of a different religion. Similarly, another commenter was concerned with possible tension, stigmatization, or abuse if religious organization grantees were permitted to use their own or dual-use facilities to provide social services.

*USAID Response:* USAID disagrees with these comments. As discussed above, even in the domestic context the Supreme Court has abandoned the

“pervasively sectarian” doctrine. Additionally, with respect to the display of religious art, icons and images, a number of Federal statutes affirm the principle embodied in this rule. (See, e.g., 42 U.S.C. 290kk-1(d)(2)(B). For no other program participants do USAID regulations prescribe the types of artwork, statues, or icons that may be placed within or without the structures or rooms in which USAID-funded services are provided. A prohibition on the use of religious icons would make it more difficult for many faith-based organizations to participate in the program than other organizations by forcing them to procure additional space. It would thus be an inappropriate and excessive restriction, typical of the types of regulatory barriers that this final rule seeks to eliminate. Consistent with constitutional guidelines, a faith-based organization that participates in USAID programs will retain its independence and may continue to carry out its mission, provided that it does not use direct USAID funds to support any inherently religious activities. Accordingly, this final rule continues to provide that faith-based organizations may use space in their facilities to provide USAID-funded services, without removing religious art, icons, scriptures, or other religious symbols.

As to the concern about religious stigma, the rule contains a number of safeguards for the rights of beneficiaries. It prohibits use of direct government funding for inherently religious activities and provides that any participation by beneficiaries of such programs in privately funded religious activities must be voluntary. In addition, the rule makes clear that a provider receiving direct USAID funds cannot discriminate against beneficiaries on the basis of religion or religious belief. In light of these straightforward provisions, we do not believe that any additional regulatory changes are required.

#### *Nondiscrimination in Providing Assistance*

*Comment:* One comment concerned the rule’s requirement that program beneficiaries not be denied services based on religion or religious belief. The commenter noted that this restriction could still permit passive compulsion, such as being required to hear proselytizing messages, or observe religious instruction or worship. The commenter recommended that Section 205.1(e) provide specifically that services may not be denied to a beneficiary based on a “refusal to participate in religious practice[s],” and

another commenter requested clarification that a provider could not discriminate on the basis of a lack of religious belief. Additionally, a commenter proposed that the rule require participating religious organizations to provide notice to program beneficiaries that their receipt of social services is not conditioned upon participation in the provider’s inherently religious activities.

*USAID Response:* We believe that the provision prohibiting faith-based organizations from requiring program beneficiaries to participate in religious activities suffices as written. In addition, the prohibition on discrimination against beneficiaries “on the basis of religion or religious belief” is explicit enough to include beneficiaries who hold no religious belief. These provisions are straightforward and require no further elaboration.

We also decline to require that religious organizations provide a notice to a beneficiary or potential beneficiary that participation in religious activities would be entirely on a voluntary basis. Grantees are encouraged to take steps to ensure that clients and prospective clients have a clear understanding of the services offered by their organization and the strictly voluntary nature of any inherently religious activities, and thus the individual’s right not to participate in any such activities, while still accepting or receiving services. The requirement that participation be voluntary, however, is sufficient to address concerns about the religious freedom of program beneficiaries.

*Comment:* The rule does not prevent government funds flowing to “anti-Semitic, racist or bigoted organizations.”

*USAID Response:* USAID disagrees. While it is not the topic of this rule, Federal law prohibits persons from being excluded from participation in USAID services or subjected to discrimination based on race, color, national origin, sex, age, or disability, and this final rule does not in any way alter those existing prohibitions.

#### *Employment Discrimination*

*Comment:* Another comment argued that the rule’s preservation of the religious organizations exemption contained in Title VII would permit government-funded employment discrimination based on religion.

*USAID Response:* We do not agree with these objections to the rule’s recognition that a religious organization does not forfeit its Title VII exemption when administering USAID-funded services. The rule is intended to

eliminate administrative barriers to religious organizations that would otherwise be eligible for USAID program funding. Applicable Federal statutory nondiscrimination requirements are not altered by this rule.

The Equal Employment Opportunity Act of 1972 expanded the exemption for religious organizations found in Title VII of the Civil Rights Act of 1964 to cover all positions offered by a faith-based employer (as opposed simply to positions directly related to their ministries). Congress establishes the conditions under which religious organizations are exempt from Title VII; this rule simply recognizes that these requirements, including their limitations, are fully applicable to Federally funded organizations unless Congress says otherwise. In 1987, the Supreme Court addressed and unanimously upheld the constitutionality of Title VII’s protection for religious organizations. *See Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327 (1987).

As to the suggestion that the Constitution restricts the government from providing funding for social services to religious organizations that consider faith in hiring, that view does not accurately represent the law. The employment decisions of organizations that receive extensive public funding are not attributable to the state, *see Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), and it has been settled for more than 100 years that the Establishment Clause does not bar the provision of direct Federal grants to organizations that are controlled and operated exclusively by members of a single faith. *See Bradfield v. Roberts*, 175 U.S. 291 (1899); *see also Bowen v. Kendrick*, 487 U.S. 589, 609 (1988).

Also, we would note that section 702(a) of the Civil Rights Act of 1964 is permissive. It allows religious staffing, but does not require it. And, religious organizations are subject to Federal civil rights laws that prohibit employment discrimination on the basis of race, color, and national origin.

Finally, Title VII recognizes that for a faith-based organization to define or carry out its mission, it is important that it be able to choose its employees based on its vision and beliefs. We note that allowing religious organizations to consider faith in hiring when they receive Federal government funds is no different than allowing Federally funded environmental organizations to hire those who share its views on protecting the environment—both groups are allowed to consider ideology and mission, which improves their

effectiveness and preserves their independence and integrity.

For the foregoing reasons, the Agency declines to amend the final rule to require religious organizations to forfeit their Section 702 exemption from liability under Title VII.

#### *Vouchers*

*Comment:* One commenter stated that the rule contemplated the “voucherization” of USAID-funded social services. In the view of this commenter, voucher programs under the rule would go beyond what is permitted under the Supreme Court’s decision in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), since many USAID-funded beneficiaries may not have access to comparable secular alternatives. As a result, said this commenter, beneficiaries might feel compelled to accept services from pervasively sectarian institutions and to submit to worship, religious education or proselytizing.

*USAID Response:* The Agency respectfully declines to adopt any changes to the regulation. USAID currently does not operate any voucher-style programs, so any further regulations in this regard would be purely hypothetical. In addition, any voucher-style program that might be offered by the Agency would have to comply with Federal law.

#### *Segregation of Program Funds*

*Comment:* One comment voiced concern that the rule did not ensure the creation of proper “firewalls” between government-funded services and core religious activities of a grantee recipient. The commenter suggested that the rule explicitly require that religious organization grantees establish a separate corporate structure to receive and segregate government funds and the social services supported thereby.

*USAID Response:* The Agency disagrees with this suggestion. An organization is, of course, free to create a separate account for its USAID funds. However, it would be unfair to require religious organizations alone to comply with these additional burdens. Further, USAID finds no basis for requiring greater oversight and monitoring of faith-based organizations than of other program participants simply because they are faith-based organizations. All program participants must be monitored for compliance with program requirements, and no program participant may use USAID funds for any ineligible activity, whether that activity is an inherently religious activity or a nonreligious activity that is outside the scope of the program at

issue. Many secular organizations participating in USAID programs also receive funding from several sources (private or governmental) to carry out activities that are ineligible for funding under USAID programs. In many cases, the non-eligible activities are secular activities but not activities that are eligible for funding under USAID programs. All program participants receiving funding from various sources and carrying out a wide range of activities must ensure through proper accounting principles that each set of funds is applied only to the activities for which the funding was provided. Applicable policies, guidelines, and regulations prescribe the cost accounting procedures that are to be followed by all recipients in using USAID funds. This system of monitoring is more than sufficient to address the commenters’ concerns.

#### *Monitoring*

*Comment:* The commenters questioned how USAID would enforce the separation of government funds from religious-use funds and what measures would be taken to prevent and remedy violations.

*USAID Response:* USAID has not revised the regulation in response to these comments because existing Agency mechanisms and procedures are sufficient to address these concerns. USAID has a responsibility to monitor all program participants to ensure that USAID funds are used in accordance with its program and any other applicable U.S. government requirements. The risks of inappropriate use of Agency funds or non-compliance with Agency program requirements exist with all program participants, not only religious organizations. All USAID program participants must carefully manage their various sources of funds, ensure that USAID funds are used only for eligible program activities, and abide by OMB or other cost accounting methods that may be specified in individual program regulations. Failure of any organization to ensure that the USAID portion of their funds is not used for prohibited purposes will result in the imposition of sanctions or penalties on the organization, including termination of participation in USAID programs. Moreover, any inherently religious activities would not be funded directly by USAID, so the normal monitoring procedures would not require the Agency to distinguish between religious and nonreligious ineligible activities. Those procedures also involve the same processes for the scrutiny and oversight for all grantees.

Finally, as mentioned above, consistent with Supreme Court precedent in the domestic context, the Agency believes that religious organizations are no less trustworthy than non-religious grantees in fulfilling their obligations under USAID grants and programs. In issuing this rule, USAID’s general approach is that faith-based organizations are not a category of applicants or program participants that require additional requirements or oversight in order to ensure compliance with program regulations. Rather, the Agency believes that faith-based organizations, like other recipients of USAID funds, fully understand the restrictions on the funding they receive, including the restriction that inherently religious activities cannot be undertaken with direct Federal funding and must remain separate from Federally funded activities. For the foregoing reasons, the Agency does not see the need for additional requirements or guidance in this area.

#### *Definition of Religious Organization*

*Comment:* The rule does not distinguish or define “religious organizations” and “faith-based organizations.”

*USAID Response:* In the preamble, we used the terms “religious organization” and “faith-based organization” interchangeably. The rule itself refers only to “religious organizations.” Neither the U.S. Constitution nor the relevant Supreme Court precedents contain comprehensive definitions of “religion” or “religious organization” that must be applied to this rule. Yet, an extensive body of judicial precedent provides practical guidance for understanding these terms. In addition, one of the objectives of this rule is to move away from unnecessary Federal inquiry into the religious nature, or absence of religious nature, of an applicant for USAID funds. With respect to any applicant for USAID funds, USAID’s focus should always be that (1) the applicant is an “eligible applicant”, as that term is defined for that program; (2) the applicant meets any other participation or eligibility criteria that the program may require; and (3) the applicant commits to undertake only eligible activities with USAID funds and to abide by all program requirements that govern those funds. Regardless of how an organization labels itself, it will be treated the same under the rule.

#### *The Exemption for Prison Chaplains*

*Comment:* One commenter suggested a narrowing of the rule’s exemption for direct funding of inherently religious activities conducted by chaplains and

religious organizations providing assistance to chaplains in prisons, detention facilities or community correction centers. This comment voiced concern that the exemption would allow an otherwise improper blending of religious doctrine with secular counseling.

*USAID Response:* We continue to believe the rule's exemption is appropriate, given the unique nature and circumstances of a penal or correctional facility. This exception to the rule's prohibition on direct funding of inherently religious activities contemplates services provided by prison clergy and individuals and organizations who work with them. Correctional institutions are heavily regulated, and extensive government control over the prison environment means that prison officials must sometimes take affirmative steps, in the form of chaplaincies and similar programs, to provide an opportunity for prisoners to practice their religious beliefs. Without such efforts, religious freedom might not exist for prisoners. Of course, religious activities must be voluntary for inmates.

#### *Miscellaneous*

*Comment:* One commenter expressed the view that the rule discriminates against foreign family planning non-governmental organizations (NGOs) that use other funding sources to perform, promote or advocate abortions, since those NGOs are ineligible for U.S. government assistance. The commenter stated that the rule created "special class" status for faith-based organizations, relative to at least those NGOs because, while the rule only required religious organizations to separate proscribed religious activities from USAID funded programs and services, abortion advocacy NGOs were wholly ineligible to receive funds under the Mexico City Policy (66 FR 17303). The commenter recommended that the Mexico City Policy be rescinded.

*USAID Response:* The rule seeks to level the playing field generally between religious organizations and non-religious organization entities in respect of Agency programming and grant eligibility. The rule is not intended to alter or rescind other rules or regulations that may disqualify certain organizations—religious or non-religious—for reasons other than their status as a religious organization. The Agency adheres to the Mexico City Policy regarding religious organizations and other entities that advocate or engage in abortion-related activities.

#### **IV. Findings and Certifications**

##### *Paperwork Reduction Act of 1995*

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, are not applicable.

##### *Executive Order 12866—Regulatory Planning and Review*

Executive Order 12866, Regulatory Planning and Review, requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Agency has determined that this rule is consistent with these priorities and principles. The Office of Management and Budget (OMB) reviewed this rule under the Order and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order) and, accordingly, has reviewed the rule. This rulemaking implements statutory authority and reflects our response to comments received on the proposed rule that we published on June 7, 2004 in the **Federal Register** (69 FR 31773).

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. In accordance with that Act, the USAID Administrator has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities.

##### *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 on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

##### **Assessment of Federal Regulation and Policies on Families**

Section 654 of the Treasury and General Government Appropriations

Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The Agency has determined that these regulations will not have an impact on family well-being as defined in the legislation.

##### **Executive Order 13132**

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. The Agency has determined that this rule does not have federalism implications that require special consultations with State and local government officials.

##### **Intergovernmental Review**

This final rule affects direct grant programs that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to promote Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

The Agency has concluded that this rule will not create or affect any Federal financial assistance to States. However, to the extent this rule falls under the Order, we intend this document to provide early notification of the Agency's specific plans and actions for the affected programs.

##### *Congressional Review*

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

##### *Catalog of Federal Domestic Assistance Numbers*

The Catalog of Federal Domestic Assistance program numbers for the programs affected by this rule are 98.001, 98.002, 98.003, 98.004, 98.005, 98.006, 98.007, 98.008, 98.009.

##### *Electronic Access to This Document*

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To use PDF you must have Adobe Acrobat Reader, [which is available free at this site]. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–

888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>. (The Catalog of Federal domestic Assistance Number does not apply.)

### List of Subjects

#### 22 CFR Part 202

Foreign aid, Grant programs, Nonprofit organizations.

#### 22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

#### 22 CFR Part 211

Agricultural commodities, Disaster assistance, Food assistance programs, Foreign aid, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

#### 22 CFR Part 226

Accounting, Colleges and universities, Foreign aid, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

■ For the reasons stated above, Chapter II of title 22 of the Code of Federal Regulations is amended as follows:

### PART 202—OVERSEAS SHIPMENT OF SUPPLIES BY VOLUNTARY NON-PROFIT RELIEF AGENCIES

■ 1. The authority citation for part 202 is revised to read as follows:

**Authority:** 22 U.S.C. 2381(a).

■ 2. Add § 202.10 to read as follows:

#### § 202.10 Participation by faith-based organizations.

The procedures established under this part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

■ 3. Revise part 205 to read as follows:

### PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

**Authority:** 22 U.S.C. 2381(a).

#### § 205.1 Grants and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other organization to participate in any USAID program for which they are otherwise eligible. In the selection of service providers, neither USAID nor

entities that make and administer sub-awards of USAID funds shall discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, the term "program" refers to Federally funded USAID grants and cooperative agreements, including sub-grants and sub-agreements. The term also includes grants awarded under contracts that have been awarded by USAID for the purpose of administering grant programs. As used in this section, the term "grantee" includes a recipient of a grant or a signatory to a cooperative agreement, as well as sub-recipients of USAID assistance under grants, cooperative agreements and contracts.

(b) Organizations that receive direct financial assistance from USAID under any USAID program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with direct financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. These restrictions on inherently religious activities do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in USAID-funded programs or services will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a religious organization that receives financial assistance from USAID may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a

religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) USAID funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. USAID funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USAID funds in this part. Sanctuaries, chapels, or other rooms that a USAID-funded religious congregation uses as its principal place of worship, however, are ineligible for USAID-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition. (See 22 CFR part 226).

(e) An organization that participates in programs funded by financial assistance from USAID shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief.

(f) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and secular organizations. All organizations that participate in USAID programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services, or

because of their religious character or affiliation.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from USAID.

(h) Many USAID grant programs require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. Grantees should consult with the appropriate USAID program office to determine the scope of any applicable requirements. In USAID programs in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(i) The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

**PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT, AND OTHER ASSISTANCE**

■ 1. The authority citation for part 211 is revised to read as follows:

Authority: 7 U.S.C. 1726a(c).

■ 2. Add § 211.13 to read as follows:

**§ 211.13 Participation by religious organizations.**

The funds provided under this part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

**PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS**

■ 1. The authority citation for part 226 is revised to read as follows:

Authority: 22 U.S.C. 2381(a).

■ 2. Amend § 226.1 to add the following text at the end of the section:

**§ 226.1 Purpose and applicability.**

\* \* \* This part shall be administered in compliance with the standards set forth in part 205, Participation by Religious Organizations in USAID Programs, of this chapter.

Dated: October 14, 2004.

Frederick W. Schieck,

Deputy USAID Administrator.

[FR Doc. 04-23566 Filed 10-18-04; 12:25 pm]

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# Federal Register

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**Wednesday,  
October 20, 2004**

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## **Part IV**

## **The President**

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**Proclamation 7832—National  
Mammography Day, 2004**

**Proclamation 7833—White Cane Safety  
Day, 2004**



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# Presidential Documents

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Title 3—

Proclamation 7832 of October 15, 2004

The President

National Mammography Day, 2004

By the President of the United States of America

## A Proclamation

Approximately one in seven women in the United States will develop breast cancer over her lifetime. Mammograms are critical for early detection of breast cancer and remain the most effective screening tool available today. Many women who develop breast cancer have no history of the disease in their families, and except for growing older, most have no strong risk factors. Regular mammogram screening, along with a clinical breast exam by a medical professional, can help identify breast cancer in its earliest stages when it is most treatable. On National Mammography Day, we underscore the importance of this life-saving technology.

The National Cancer Institute and the United States Preventive Services Task Force recommend a mammogram every 1 to 2 years for women age 40 and over. Strict guidelines help to ensure that mammograms are administered with the lowest possible doses of radiation by the best-trained medical staff. Scientists continue to study ways to improve mammograms and other screening technologies, and this research promises to make screening even more accurate and further reduce the number of breast cancer deaths.

My Administration is committed to preventing, detecting, treating, and ultimately finding a cure for breast cancer. Through an early detection program at the Centers for Disease Control and Prevention, we have devoted over \$200 million for promoting mammography use and helping low-income women afford screening for breast and cervical cancer. In addition, the National Institutes of Health is conducting the largest trial ever of new, early-detection technologies to help doctors target breast cancer before symptoms occur.

My Administration will continue working to ensure that America's women have access to the best screening services available. I urge women, especially those 40 and over, to talk to their doctors about breast cancer screening and to encourage their friends and family to do the same. Together, we can help save lives and build a healthier future for all our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 15, 2004, as National Mammography Day. I call on all Americans to observe this day with appropriate programs and activities recognizing our health care professionals and researchers for their contributions in helping to detect and treat breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is written in a cursive style with a large initial "G" and a distinct "W".

[FR Doc. 04-23621  
Filed 10-19-04; 8:45 am]  
Billing code 3195-01-P

## Presidential Documents

**Proclamation 7833 of October 15, 2004**

### **White Cane Safety Day, 2004**

**By the President of the United States of America**

#### **A Proclamation**

To help increase their mobility and assist them in their daily lives, many people who are blind or visually impaired use a white cane. On White Cane Safety Day, we celebrate the symbolism of this important tool and the enduring spirit of independence and determination shown by Americans who use it.

In 1964, President Lyndon B. Johnson signed the first Presidential proclamation for White Cane Safety Day. He wrote that the observance would “make our people more fully aware of the meaning of the white cane” and help increase the safety and self-reliance of our citizens who are blind or visually impaired. Over the last four decades, our Nation has removed many barriers for these individuals, making it easier for them to find jobs, access public buildings, and live independently in their communities.

Today, we are working to ensure that all Americans with disabilities have the opportunity to live with dignity, work productively, and realize their full potential. Through the New Freedom Initiative, my Administration continues to build on the progress of the Americans with Disabilities Act of 1990 (ADA) to further promote the full participation of people with disabilities in all areas of society. The Department of Justice’s ADA Business Connection is helping create a better understanding of ADA requirements and promote dialogue between the business community and the disability community. And the Department of Justice’s Project Civic Access is improving public facilities to ensure that people with disabilities are integrated into community life. Through the Ticket to Work program and the Work Incentives Improvement Act, we are making significant strides toward building an America where all individuals are recognized for their talents and creativity. These efforts will help provide Americans who are blind or visually impaired the opportunity to pursue their dreams and realize the promise of our great country.

The Congress, by joint resolution (Public Law 88–628) approved on October 6, 1964, as amended, has designated October 15 of each year as “White Cane Safety Day.”

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2004, as White Cane Safety Day. I call upon public officials, business leaders, educators, librarians, and all the people of the United States to join with me in ensuring that all the benefits and privileges of life in our Nation are available to individuals who are blind and visually impaired, and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with a large initial "G" and a distinct "W" and "B".

[FR Doc. 04-23622  
Filed 10-19-04; 8:45 am]  
Billing code 3195-01-P



# Federal Register

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**Wednesday,  
October 20, 2004**

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**Part V**

## **The President**

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**Notice of October 19, 2004—Continuation  
of the National Emergency With Respect  
to Significant Narcotics Traffickers  
Centered in Colombia**



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**Presidential Documents**

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Title 3—

Notice of October 19, 2004

**The President****Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia**

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The order blocks all property and interests in property that are in the United States or within the possession or control of United States persons or foreign persons listed in an annex to the order, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause an extreme level of violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2004. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,  
October 19, 2004.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at [http://www.archives.gov/federal\\_register/public\\_laws/public\\_laws.html](http://www.archives.gov/federal_register/public_laws/public_laws.html).

The text of laws is not published in the **Federal**

**Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

#### H.R. 4837/P.L. 108-324

Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (Oct. 13, 2004; 118 Stat. 1220)

#### S. 1778/P.L. 108-325

Craig Recreation Land Purchase Act (Oct. 13, 2004; 118 Stat. 1268)

#### H.R. 982/P.L. 108-326

To clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa. (Oct. 16, 2004; 118 Stat. 1270)

#### H.R. 2408/P.L. 108-327

National Wildlife Refuge Volunteer Act of 2004 (Oct. 16, 2004; 118 Stat. 1271)

#### H.R. 2771/P.L. 108-328

To amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program. (Oct. 16, 2004; 118 Stat. 1273)

#### H.R. 4115/P.L. 108-329

To amend the Act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation. (Oct. 16, 2004; 118 Stat. 1274)

#### H.R. 4259/P.L. 108-330

Department of Homeland Security Financial Accountability Act (Oct. 16, 2004; 118 Stat. 1275)

#### H.R. 5105/P.L. 108-331

To authorize the Board of Regents of the Smithsonian Institution to carry out construction and related activities in support of the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona. (Oct. 16, 2004; 118 Stat. 1281)

#### S. 2292/P.L. 108-332

Global Anti-Semitism Review Act of 2004 (Oct. 16, 2004; 118 Stat. 1282)

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